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HAMILTON'S WORKS.

VOL. VII.

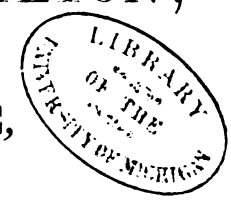
THE WORKS

OF

ALEXANDER HAMILTON;

COMPRISING

HIS CORRESPONDENCE,



AND

HIS POLITICAL AND OFFICIAL WRITINGS,

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CIVIL AND MILITARY.

PUBLISHED FROM THE ORIGINAL MANUSCRIPTS DEPOSITED IN THE DEPARTMENT OF STATE,

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EDITED BY

JOHN C. HAMILTON,

AUTHOR OF "THE LIFE OF HAMILTON."

VOL. VII.

NEW-YORK:
JOHN F. TROW, PRINTER, 49 ANN-STREET.
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ENTERED according to Act of Congress, in the year 1851, by
JOHN C. HAMILTON,
In the Clerk's Office of the District Court for the Southern District of New-York.

POLITICAL ESSAYS.

For the Gazette of the United States.

July 25, 1792.

MR. FENNO,

The editor of the "National Gazette" receives a salary from government.

Quere. Whether this salary is paid him for *translations*, or for publications, the design of which is, to vilify those to whom the voice of the people has committed the administration of our public affairs—to oppose the measures of government, and, by false insinuations, to disturb the public peace?

In common life it is thought ungrateful for a man to bite the hand that puts bread in his mouth; but if the man is hired to do it, the case is altered.

T. L.

AN AMERICAN.

For the Gazette of the United States.

I.

August 4, 1792.

Mr. FENNO,

It was easy to foresee, when the hint appeared in your Gazette of the 25th July, that the editor of the National Gazette

received a salary from the general government, that advantage would be taken of its want of explicitness and particularity, to make the circumstance matter of merit in Mr. Freneau, and an argument of his independent disinterestedness. Such a turn of the business cannot be permitted to succeed. It is now necessary that the whole truth should be told, and that the real state of the affair should be well understood.

Mr. Freneau, before he came to this city to conduct the National Gazette, was employed by Childs and Swaine, printers of the Daily Advertiser, in New-York, in the capacity of editor or superintendent.

A paper more devoted to the views of a certain party, of which Mr. Jefferson is the head, than any to be found in this city, was wanted. Mr. Freneau was thought a fit instrument; a negotiation was opened with him which ended in the establishment of the National Gazette, under his direction.

Mr. Freneau came here, at once editor of the National Gazette, and clerk for foreign languages in the department of Mr. Jefferson, Secretary of State; an experiment somewhat new in the history of political manœuvres in this country: a newspaper instituted by a public officer, and the editor of it regularly pensioned with the public money in the disposal of that officer; an example savoring not a little of that spirit, which, in the enumeration of European abuses, is the continual theme of declamatory censure; an example which could not have been set by the head of any other department, without having long since rung throughout the United States.

Mr. Freneau is not then, as he would have it supposed, the independent editor of a newspaper, who, though receiving a salary from government, has firmness enough to expose its mal-administration: he is the faithful and devoted servant of the head of a party, from whose hands he receives the boon. The whole complexion of his paper exhibits a decisive internal evidence of the influence of that patronage under which he acts.

Whether the services rendered by him are equivalent to the compensation he receives, is best known to his employer and himself; there is, however some room to doubt. It is well known

that his employer is, himself, well acquainted with the French language, the only one of which Mr. Freneau is the translator, and it may be a question how often his aid is necessary.

It is somewhat singular, too, that a man acquainted with but one foreign language, engaged in an occupation which it may be presumed, demands his whole time and attention—the editor of a newspaper—should be the person selected as the clerk for foreign languages in the department of the United States for foreign affairs. Could no person be found acquainted with more than one foreign language, and who in so confidential a trust could have been regularly attached to, in the constant employ of the department, and immediately under the eye of the head of it?

But it may be asked—is it possible that Mr. Jefferson, the head of a principal department of the government, can be the patron of a paper, the evident object of which is to decry the government and its measures? If he disapproves of the government itself, and thinks it deserving of his opposition, can he reconcile it to his own personal dignity, and the principles of probity, to hold an office under it, and employ the means of official influence in that opposition? If he disapproves of the leading measures which have been adopted in the course of its administration—can he reconcile it with the principles of delicacy and propriety, to hold a place in that administration, and at the same time to be instrumental in vilifying measures which have been adopted by majorities of both branches of the legislature, *and sanctioned by the chief magistrate of the Union?*

These questions would certainly be natural. An answer might be left to the facts which establish the relation between the Secretary of State and the editor of the National Gazette as the text, and to the general tenor of that paper, as the commentary. Let any intelligent man read the paper from the commencement of it, and let him determine for himself whether it be not a paper virulently hostile to the government and its measures. Let him then ask himself whether, considering the connection which has subsisted between the Secretary of State and the editor of that paper, coeval with its first establishment, it be probable that the complexion of the paper is contrary to the views of that officer.

If he wishes for a confirmation of the inference which he cannot fail to draw, as a probable one, let him be informed in addition,

1st. That while the Constitution of the United States was depending before the people of this country for their consideration and decision, Mr. Jefferson, being in France, was opposed to it in some of its most important features, and wrote his objections to some of his friends in Virginia. That he at first went so far as to discountenance its adoption, though he afterwards recommended it, on the ground of expediency in certain contingencies.

2d. That he is the declared opponent of almost all the important measures which have been devised by the government, more especially the provision which has been made for the public debt, the institution of the Bank of the United States, and such other measures as relate to the public credit, and the finances of the United States.

It is proper that these facts should be known, for if the people of the United States believe, that their happiness and their safety are connected with the existence and maintenance of an efficient national or federal government; if they continue to think that which they have created and established worthy of their confidence—if they are willing that the powers they have granted to it should be exercised with sufficient latitude to attain the ends they had in view in granting them, and to do the essential business of the nation; if they feel an honest pride in seeing the credit of their country, so lately prostrate, elevated to an equal station with that of any nation upon earth; if they are conscious that their own importance is increased by the increased respectability of their country, which from an abject and degraded state, owing to the want of government, has, by the establishment of a wise Constitution, and the measures which have been pursued under it, become a theme for the praise and admiration of mankind; if they experience that their own situation is improved and improving—that commerce and navigation have advanced, that manufactures are progressive—that agriculture is thriving—that property is more secure than it was—industry more

certain of a real, not nominal reward—personal liberty perfectly protected—that notwithstanding the unavoidable demands upon them to satisfy the justice, retrieve the reputation, and answer the exigencies of the country, they are neither less burthened than they were, or more equal to the burthen they have to sustain;—if these are their opinions and their experience, let them know and understand, that the sentiments of the officer who has been mentioned—both as to the principles and the practice of the Constitution which was framed by them, and has been administered by their representatives, freely chosen—are essentially different from theirs.

If, on the contrary, the people of the United States are of opinion, that they erred in adopting their present Constitution—that it contains pernicious principles and dangerous powers—that it has been administered injudiciously and wickedly—that men whose abilities and patriotism were tried in the worst of times, have entered into a league to deceive, defraud, and oppress them; that they are really oppressed and ruined, or in imminent danger of being so;—if they think the preservation of national Union a matter of no or small consequence; if they are willing to return to the situation from which they have escaped, and to strip the government of some of the most necessary powers with which they have clothed it; if they are desirous that those which may be permitted to remain should be frittered away by a narrow, timid, and feeble exercise of them; if they are disposed to see the national government transformed into the skeleton of power;—if they are persuaded that nations are under no ties of moral obligation—that public credit is useless, or something worse—that public debts may be paid or cancelled at pleasure—that when a provision is not likely to be made for them, the discontents to be expected from the omission may honestly be transferred from a government able to vindicate its rights to the breasts of individuals who may first be encouraged to become the substitutes to the original creditors and may afterwards be defrauded without danger;*—if to national

* Such was the advice given to Congress by Mr. Jefferson, when Minister Ple-

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HAMILTON'S WORKS.

VOL. VII.

That officer has had too considerable a part of his political education amidst the intrigues of an European Court, to hazard a direct personal commitment in such a case; he knows how to put a man in a situation calculated to produce all the effects he desires, without the gross and awkward formality of telling him, "Sir, I mean to hire you for the purpose."

It is impossible for a correct mind not to pronounce, that, in the abstract, a connection like that which is acknowledged to subsist between you and Mr. Jefferson, between the *editor of a newspaper*, and the head of a department of the government, is *indelicate* and *unfit*, and consequently of a nature to justify suspicion.

A connection of that sort in a free country, is a pernicious precedent, inconsistent with those pretensions to extraordinary republican purity, of which so suspicious a parade is upon every occasion exhibited.

The apology you attempt for it is ill-founded and inadmissible; there is no law, which annexes a particular salary to the clerkship in question—the appointment is under the general authority given to the head of the department, to appoint clerks with salaries not exceeding *aggregatively* five hundred dollars to each—there is therefore no restriction to the sum you mention to induce, as matter of necessity, the employment of a person engaged in other occupations—and not ordinarily and regularly attached to the department. Five hundred dollars, or even more, might be legally given, for a clerk, competent to the duty, and if it was not sufficient wholly to employ him, his surplus time might be dedicated to other business of the department—nor could there have been any mighty difficulty in finding a clerk so qualified.

But if there had been such difficulty, some other character should undoubtedly have been found—the precedent of such a species of influence erected over the press, ought to have been avoided. This is so obvious, that the not having avoided it is a proof of sinister design.

The employment of Mr. Pintard, by the Secretary of State, was a natural consequence of particular situation. Mr. Pintard, if I am rightly informed, had been employed in the same capa-

city under the old government, and it was natural enough to continue him in the occupation and employment; but Mr. Pintard was *not the printer of a Gazette.*

These strictures, though involving Mr. Freneau, it shall be confessed have been drawn forth principally with a view to a character of greater importance in the community—they aim at explaining a public officer, who has too little scrupled to embarrass and disparage the government of which he is a member—and who has been the prompter, open or secret, of unwarrantable aspersions on men, who so long as actions, not merely professions, shall be the true test of patriotism and integrity, need never decline a comparison with him, of their titles to the public esteem.

AN AMERICAN.

III.

August 18th, 1792.

The charges which have been brought against "the editor of the National Gazette," as he himself states them to be, are no otherwise personal charges, than as they designate the *person* against whom they are made.

In their application to Mr. Freneau, they affect him solely in his capacity of editor of a public paper (which may justly be considered as a public capacity), and in relation to matters of public or national concern. It is therefore a mere subterfuge to call them *personal* charges, and then to say they shall not be answered, unless the author of them will come forward to support them. It was easily anticipated that he might have good reasons for not discovering himself, at least at the call of Mr. Freneau—and it was necessary for him to find a shelter. What else could he do? The charges brought against him are substantiated by facts, some of them acknowledged by himself, others proved by a reference to public documents, and to his own paper, others of general notoriety.

The inferences from these facts are the only things which remain for discussion, and these so naturally flow from the premises, that they defy the arts of sophistry to obscure them. The expedient, however, which has been adopted comes rather late, considering that Mr. Freneau began to answer even under the solemnities of an oath.

AN AMERICAN.

PAYMENTS OF PUBLIC DEBT.

August 29th, 1792.

The following authentic documents respecting the progress which has been made by the *present* Government of the United States, towards extinguishing the Debts contracted under the former Government, will, it is presumed, be very acceptable to the people of the United States; and it is hoped that the different editors of newspapers will give the information the general circulation which its importance merits.

I.

TREASURY DEPARTMENT, Register's Office, 24th August, 1792.

SIR:

I have the honor to inclose an abstract and statement of the debt incurred by the late Government, and which has been paid off from the funds of the present Government, amounting to one million eight hundred and forty-five thousand two hundred and seventeen dollars forty-two cents; but this sum will be increased, when the balance of three hundred and ninety seven thousand twenty-four dollars thirteen cents, remaining to be appropriated to the farther purchase of the public debt, shall be applied, and which more particularly appears by the subjoined statement.

With every sentiment of the highest respect,

I have the honor to be, Sir,

Your most obedient and most humble servant,

JOSEPH NOURSE, Register.

HON. ALEXANDER HAMILTON, *Secretary of the Treasury.*

II.

Statement of the balance which remains to be applied to the further purchase of the Public Debt.

By the Act passed 12th August, 1790, making provision for the reduction of the Public Debt, Section 2nd, it is enacted, That all such surplus of the product of the duties arising from impost and tonnage to 31st December, 1790, after satisfying the several appropriations therein specified, shall be applied to the purchase of the public debt.

The product of said duties were	$3.026,070 65⅛
The total appropriations were	1,687,194 81
The surplus fund to 31st December, 1790 . .	$1,338,875 84⅛
Deduct the amount paid for $1,456,743 18 of the public debt extinguished as per abstract . .	$941,851 69
Leaves a balance which remains to be applied to the farther purchases of the public debt . . .	$397,024 15⅛

III.

An abstract Statement of the sum extinguished of the Public Debt, also of the payment from the funds of the present Government of certain claims which were incurred by the late Government.

PURCHASES OF THE PUBLIC DEBT.

Amount thereof extinguished	$1,456,743 38
Warrants drawn by the Board of Treasury under the late Government, and which have been discharged in pursuance of the Act of Congress of 29th September, 1789	157,789 94
Civil List: for various payments made upon accounts which originated u der the late Government	25,768 50
War Department, being for arrearages of pay due to sundry officers of the army, and for provisions furnished	7,808 40
Abraham Skinner. late Commissary General of Prisoners, for the Board of American Prisoners of War at Long Island; appropriated by Congress, per their Act passed 12th August, 1790	88,683 18
Representatives of Mr. de Decoudray, balance of pay . . .	2,977 24
Ditto Hon. John Laurens, his salary on an embassy to the French Court	6,017 31
Francis Dana, salary on an embassy to the Court of St. Petersburg	2,410 30
Benson, Smith and Barker, their expenses attending the embarkation of the British troops at New York	1,000
His Most Christian Majesty, for military and ordnance stores supplied to American ships of war, in the French West Indies .	29,029 68

Oliver Pollock, for balance due him for supplies at New Orleans, with interest thereon, in conformity with the several Acts of Congress	108,605	
Mons. Gardoqui & Son, balance due for supplies furnished in Spain	502	86
	$250,542	14
Bills of exchange, which had been drawn on Foreign Commissioners, not paid by them	4,185	50
Timothy Pickering, late Quarter-Master General, being on account of the appropriation of $40,000, passed July 1st, 1790	2,077	89
Grants of Congress, viz:—		
John McCord, per Act of Congress of 1st July, 1790	1,809	71
Jehoakim M. Tocksin, per Act of Congress of the 26th of March, 1790	120	00
Baron de Glaubeck, per Act of 29th September, 1789	140	26
Seth Harding, per Act 11th August, 1790	200	00
Caleb Brewster, ditto, ditto	348	57
	2,118	54
	$1,845,217	42

TREASURY DEPARTMENT, *Register's Office, August 23rd*, 1792.

JOSEPH NOURSE, Register.

CIVIS TO MERCATOR.

I.

Sept. 5th, 1792.

Certain Treasury Documents were lately published for the information of the community, without any precise designation of the purpose for which they were published. They were left to speak for themselves, with only a short introduction, denominating them "Authentic documents respecting the progress which has been made by the present government of the United States, towards extinguishing the debts contracted under the former government."

A writer in this Gazette of Saturday last, under the signature

of Mercator, has thought fit to come forward, and, assigning what he conceives to be the object of the publication, endeavors to show, that the contrary of what was intended, is true.

What right had MERCATOR to suppose, that any thing more was intended, than simply to inform the public *that besides a punctual payment of the interest on the debt, from the period at which measures were matured to begin that payment, a considerable sum of the Capital of the Debt has been extinguished, and that a further sum will be extinguished by a provision already made?* leaving them to this very natural inference, which will be drawn by every candid mind, that the government has been as attentive as circumstances would permit, at so early a period, to the extinguishment of the debt.

But admitting MERCATOR to be right in his suggestion of the object, it is presumed that a liberal construction of all circumstances will justify the position, that the present government has reduced the debt of the former government, to the extent expressed in the documents which have been published. This will result, if it shall appear that provision was made for the interest, as early as was reasonably practicable. To have paid the interest from that period, and to have sunk so much of the capital in addition, is, in fair construction, to have reduced the debt to the extent of the capital sunk.

When Mercator undertook to suppose an object, which was not declared, he ought to have taken care to be better informed and more accurate. When he undertook to state an account with the Treasury Department, he ought not only to have selected just items, to have adverted to dates, times and possibilities, but he ought to have stated *the whole account.*

This he has not done; on the contrary he has both misrepresented and suppressed facts. He has shown, in the true spirit of a certain junto (who not content with the large share of power they have in the government, are incessantly laboring to monopolize the whole of its power, and to banish from it every man who is not subservient to their preposterous and all-grasping views), that he has been far more solicitous to *arraign*, than to manifest the truth—to take away, than to afford consolation to the people of the United States.

The following particulars are proofs of his want both of accuracy and candor.

First.—He charges to the Treasury Department arrears of interest, which accrued *prior* to its existence, that is, from the 1st of August, 1789; whereas the department was not instituted till the 2d of September, nor organized till about the 13th, when, I am informed, the Secretary of the Treasury entered upon the duties of his office.

Secondly.—He takes as the standard of his calculation, the whole amount of the annual interest on the whole amount of the public debt, as it exists under the present funding system, including all the arrears of interest made principal, and the $21,500,000 of assumed debt—whereas the arrears which did actually accumulate to the end of the year 1790, were only on the *principal* of the foreign and domestic debt, and fall short more than a million of dollars of the sum he states.

These simple facts prove the fallacy of his statement.

But the principle, upon which he proceeds, is not less absurd than his calculations are fallacious.

With as much propriety might an executor be charged with increasing the debts of his testator, by suffering the arrears of interest on his bonds and notes to accumulate, while he was collecting, arranging and disposing of the estate; as the present government, or if the phrase is preferred, the present Treasury Department, may be charged with those arrearages, which unavoidably accrued, during the preparatory measures for bringing the resources of the public estate into activity. With as much reason might it be charged with the 13,000,000 of interest, which accumulated under the imbecile system, the old confederation, to which, if not to worse,—a dissolution of the Union!—the designs of the junto evidently point or tend.

When, proceeding upon grounds so loose and unjust, Mercator makes the extraordinary declaration, that the Secretary of the Treasury "has *produced* an *actual addition* to the public debt of more than one million and a half of dollars," is it not palpable, that in the most malignant spirit of party he is endeavoring to destroy the public confidence in that officer, no matter how unfair

the means, as one link in the chain of measures by which the domineering aims of his party are to be effected, or the cause of confusion promoted? Is it not clear that in the language and conceptions of MERCATOR to *provide for a* debt, and to "*produce*" it, amount to the same thing?

To form a still better estimate of the spirit by which he is actuated, let there be a review of some leading facts.

Congress met under the present government on the 1st of April, 1789. To put it in motion they had a vast and very arduous work before them. This was of course a primary object; a provision for the debt, a secondary one. It was natural then that the first session should have been exhausted in *organizing* the government, and that a systematic provision for the debt should be postponed, as in fact it was, to the second session. A temporary and partial provision of revenue only was accordingly made, by very moderate duties of impost, far short of an adequate fund for the support of government, and the payment of the interest on the debt, to take effect on the 1st of August, 1789; which was as early as the law could be promulgated throughout the Union, and the subordinate executive arrangements made for carrying it into execution.

It has been stated, that the Treasury Department began to be in activity on the 13th of September. Congress adjourned on the 29th of that month, after having instructed the Secretary of the Treasury to report concerning the debt at *the ensuing session.* It is to be recollected, that without an order of the House, that officer can propose nothing.

It is evident, that there was no responsibility on the side of that department, for the accumulation of interest on the debt until, at earliest, the second session, which began on the 7th of January, 1790.

On Thursday, the 14th of January, the Secretary of the Treasury submitted to the House of Representatives, according to order, the plan of a provision for the public debt, comprehending an additional provision of revenue, for the purpose of facing the interest. But it was not till the 4th of August that the principles of a provision for the debt were determined by

law, nor till the 10th of the same month that a supplementary fund was established for paying the interest upon it; and from considerations of an obvious nature, the commencement of this fund in operation was deferred to the 1st of January following.

Here again 'tis manifest, that there was no responsibility in the Treasury Department, for the accumulation of interest up to the period from which it has been punctually paid, namely, the 1st of January, 1791, because it was not in the power of that department to have accelerated a provision for it. Nor will any blame justly light upon Congress for the moderate delay which ensued. It was their duty to bestow much deliberation upon the subject. Much difference of opinion—much discussion—a considerable loss of time, were to be expected in relation to a subject so momentous, so perplexing, touching so differently so many chords of passion and interest.

The law providing for the debt having passed, the Secretary of the Treasury immediately seized the opportunity which was afforded, by an unappropriated surplus of revenue to the end of the year 1790, to make an impression on the debt. He proposed that it should be applied to purchases of the debt, at its market prices, which was agreed to by Congress, and has been carried into execution, as far as circumstances have hitherto permitted.

This was certainly the best application that could have been made of the fund. It was equally the interest of the government and of the public creditors:—of the government, because it was a clear gain of all the difference between the sum of specie paid, and the sum of debt redeemed, which is already $514,891 and 69 cents, and will be more when the remaining sum appropriated comes to be applied to further purchases; because it was a clear saving to the nation of all the difference in price which was paid by foreigners in their purchases; in consequence of the competition of the government, in the market, as a purchaser. It is well known to every well-informed man, that the rapid appreciation of the debt, was materially owing to that circumstance, and of course the saving to the nation by it has been *very considerable.* The measure in question was equally beneficial to the public creditors—because if the fund applied to purchases had been

apportioned among them in payment of interest, it would have been a mere pittance; but applied as it was, it gave a rapid spring to the whole value of the stock.

As it is therefore proved that the Treasury Department is chargeable with no delay with regard to a provision for the debt, occasioning an unnecessary accumulation of interest, in a question of merit respecting that department which MERCATOR has raised, it will follow, that the department on account of the operations which have been advised by it, has an unbalanced claim of merit with the community—

1st.—For all that has been or shall be saved by purchases of the public debt, at the market prices.

2d.—For all that has been saved to the nation, for the more advanced prices given by foreigners in their purchases of the debt.

But there are other items of importance to be placed on the same side of the account.

1st.—The saving resulting from the reduced rate on the new loans for paying off the foreign debt.

2d.—The positive gain of 1,000,000 of dollars, by the institution of the Bank of the United States. The stock of the Bank being at an advance of 50 per cent., it is clear, that the government, by having become a proprietor to the extent of 2,000,000 of dollars, has by this single operation made an actual net profit of 1,000,000 of dollars, that is, it can get three millions for what will have cost it only two.

I add nothing for any saving, which has accrued from the particular modification of the domestic debt, for two reasons; one because the subject being more complicated would require more illustration, and the other, because the plan adopted by the legislature, though having the leading features of that proposed by the Treasury Department, differs from it in some material respects; a strong refutation of the idea, so industriously inculcated, that the plans of that department are implicitly followed by the legislature; and a decisive proof, that they have had no more weight than they ought to have had; that is to say, than they were entitled to from their intrinsic reasonableness in the

unbiassed and independent judgment of majorities in the two houses of Congress. The result of what has been said is this: that provision was made for paying the interest of the debt as early as could reasonably have been expected; that no negligence having happened, the arrears of interest which have accumulated in the interval are properly a part of the debts of the former government; and consequently, that the sums which appear to have been absorbed are so much of the debts of the *old* government extinguished by the *new*.

Mercator brings as a proof that the public debt has increased and is increasing, "what he terms the present amount and *increasing* weight of the duties of impost and excise." Let facts decide the soundness of this logic. In the last session of Congress, the only excise duty which exists was reduced upon an average fifteen per cent. The only addition which was then made to the imposts was for carrying on the Indian war, and by avoiding recourse to permanent loans for that purpose, to *avoid an increase of the debt.* How then can that, which was done to avoid an increase of debt, *be a proof that it has increased?*

CIVIS.

II.

PHILADELPHIA, Sept. 11th, 1792.

Little other notice of the futile reply of Mercator to Civis is necessary, than merely to put in a clear light the erroneousness of the standard, which he has adopted for calculating the arrears of interest to the end of the year 1790.

He takes for his standard, the *present* annual interest on the *whole* amount of the public debt, as provided for *under the funding system;* that is, 1st. Upon the *former principal* of the foreign and domestic debt:—2d. Upon the *arrears of interest* of that principal, which on the 1st of January, 1791, and *not before*, became principal, by the provisions of the funding law:—3d. Upon the whole amount of the assumed debt, that is, 21,500,000.

Now the fact is, that the only arrears which can colorably be computed, are those on the principal of the *foreign* and *domestic debt*, according to the terms of interest which they *actually bore*, up to the 1st January, 1791. 1st. Because, in fact, the arrears of interest on that principal *did not bear interest* till the 1st January, 1791; and consequently *no interest whatever accrued upon them.* And 2d, because the government of the United States took up the State debts, as they stood at the end of the year 1791. If arrears of interest accumulated, in the mean time, 'twas the affair of the State governments, which were the debtors and alone responsible for a provision for it, not of the government of the United States, which only became responsible by virtue of the assumption, from the time that it took effect, that is, from the 1st January, 1792, from which period the interest has been punctually paid. This is the true view of it, unless it can be shown that the government of the United States is answerable for the neglects and omissions of the State governments. But, what arrears may have really accumulated on this part of the debt is unknown, as it is understood there was in some States a provision for the interest.

Calculating then the arrears, which did actually accrue, that is on the principal and interest of the foreign and domestic debt, the former, according to the various rates which were stipulated upon it, and the latter at 6 per cent., the rate which it then bore, from the 1st of August, 1789, to the 1st of January, 1791, from which period interest has been paid—the amount is $3,003,378 47, that is, $1,032,980 72 less than the amount of the arrears for the same period by Mercator. This statement is not made from any secret sources of information, but from documents long since in the possession of the public. If Mercator has been inattentive to the means of information, he ought not to come forth the instructor of his fellow citizens.

In a mere question of the *increase* and *decrease* of the public debt, if the arrears of interest which accrued on the assumed debt, up to the period from which the United States began to pay interest upon it, be placed on one side of the account, the saving or reduction, by the nature of the provision for it, ought

to be placed on the other side, and the balance will be in favor of the United States.

Had Mercator stated an account with the Treasury Department, on his own principle candidly applied, namely, that of setting off the surplus of revenue, to the end of the year 1790, against the amount of the debt redeemed by purchases and payments, the account would have stood thus—

Debtor Side.

To amount of surplus revenue at the end of the year 1790	$1,338,875 84

Credit Side.

By the amount of the sum which appears by the statement of the Register of the Treasury to have been redeemed and paid off. . .	$1,845,217 42
By sum remaining to be applied	397,024 13
	$2,242,241 55
Balance .	$903,366 71

being the amount of the public debt actually reduced, beyond the amount of the funds remaining on hand, at the commencement of the operation of the funding system, in virtue of antecedent provision, and exclusive of reductions on the rates of interest.

As to the concluding remarks of Mercator, they depart from the question. 'Tis no matter, in reference to that, whether the items which were mentioned are circumstances of temporary expedient, or results of the soundest policy. They constitute positive *savings* and gains to the nation.

But it was not sufficient for Mercator to assert; he ought to have shown what sacrifice of justice or principle was involved in them. Not having done it, it is sufficient to observe, that one good effect of the measures of finance, which have been adopted by the present government, is at least unequivocal. *The public credit has been effectually restored.* This may be in the eyes of Mercator of little moment. There are certain theorists who hold both private and public credit to be pernicious. But their dis-

ciples are not numerous; at least among sober and enlightened men.

The actual benefits or actual evils of the measures connected with the Treasury Department, present and future, would be cheerfully submitted to the TEST of EXPERIENCE. Happy would it be for the country, honorable for human nature, if the experiment were permitted to be fairly made. But the pains which are taken to misrepresent the tendency of those measures, to influence the public mind, to disturb the operations of the government, are a decided proof, that those to whom they are attributable dare not trust the appeal to such a TEST. Convinced of this, they have combined all their forces, and are making one desperate effort to gain an ascendency in the public councils, by means of the ensuing election, in order to precipitate the laudable work of destroying what has been done.

CIVIS.

FACT.

For the National Gazette.

Sept. 11th, 1792.

Much declamation has been indulged against certain characters, who are charged with advocating the pernicious doctrine, that "public debts are public blessings," and with being friends to a perpetuation of the public debt of the country. Among these characters, if the Secretary of the Treasury has not been named, he has been pretty plainly alluded to. It is proper to examine what foundation there is then for those charges.

That officer, it is very certain, explicitly maintained, that the *funding* of the existing debt of the United States would render it a national blessing; and a man has only to travel through the United States with his eyes open, and to observe the invigoration of industry in every branch, to be convinced that the position is well founded.

But, whether right or wrong, it is quite a different thing from maintaining, as a general proposition, that a public debt is a public blessing; particular and temporary circumstances might render that advantageous at one time, which at another might be hurtful.

It is known that prior to the revolution, a great part of the circulation was carried on by paper money; that in consequence of the events of the revolution, that resource was in a great measure destroyed, by being discredited, and that the same events had destroyed a large proportion of the moneyed and mercantile capital of the country, and of personal property generally. It was natural to think that the chasm created by these circumstances required to be supplied, and a just theory was sufficient to demonstrate, that a funded debt would answer the end. To infer that it would have such an effect, was no more to maintain the general doctrine of "public debts being public blessings," than the saying, that paper emissions, by the authority of government, were useful in the early periods of the country, was the maintaining, that they would be useful in all the future stages of its progress.

But to put the matter out of all doubt, and to show how destitute of candor the insinuations against the Secretary of the Treasury on this head have been, I have extracted, and shall insert here some passages from some of his reports to the House of Representatives, by which it will be seen, that his conduct as well as his language have been in uniform opposition to the doctrine charged upon him. The length of these reports, it is probable, have prevented many well-disposed persons from being acquainted with their contents, the presumption of which emboldens the calumniators of public characters and measures to make assertions, of the falsehood of which the mere perusal of official documents would convict them.

Extract from a report of the Secretary of the Treasury on the subject of a provision for the public debt, presented the 14th of January, 1790. "Persuaded, as the Secretary is, that the proper funding of the *present* debt will render it a national blessing; yet he is *so far* from acceding to the position, in the

latitude in which it is sometimes laid down, that "public debts are public benefits," a position *inviting to prodigality, and liable to dangerous abuse*, that he ardently wishes to see it incorporated, as a *fundamental maxim* in the *system of public credit* of the United States, that the *creation of debt should be always accompanied with the means of extinguishment.* This he regards as the *true secret* for *rendering public credit immortal.* And he presumes that it is difficult to conceive a situation in which there may not be an adherence to the maxim. At least he feels an *unfeigned solicitude* that this may be attempted by the United States, and that they may commence their measures for the establishment of credit with the observance of it."

Extract from a report of the Secretary of the Treasury on manufactures, presented the 5th December, 1791.

After using several arguments to illustrate the operation of a funded debt as *capital*, the Secretary concludes thus. "There are respectable individuals, who from a *just aversion* to an *accumulation* of public debt, are unwilling to concede to it any kind of utility, who can discover no good to alleviate the ill with which they suppose it pregnant, who cannot be persuaded that it ought in any sense to be viewed as an increase of capital, lest it should be inferred that the more debt the more capital, the greater the burthens the greater the blessings of the community."

"But it interests the public councils to estimate every object as it truly is; to appreciate how far the good in any measure is compensated by the ill, or the ill by the good; either of them is seldom unmixed." "Neither *will it follow, that an accumulation of debt is desirable*, because a certain degree of it operates as capital. There may be a plethora in the political, as in the natural body; there may be a *state of things in which any such artificial capital is unnecessary.* The debt too may be swelled to such a size as that the greatest part of it may cease to be useful as a capital, serving only to pamper the dissipation of idle and dissolute individuals; as that the sums required to pay the interest upon it may become oppressive, and beyond the means which a government can employ, consistently with its tranquillity, to raise them; as that the resources of taxation, to face the debt,

may have been strained too far to admit of extensions adequate to exigencies, which regard the public safety."

"Where this critical point is, cannot be pronounced; but it is impossible to believe that there is not such a point."

"And as the vicissitudes of nations beget a perpetual tendency to the accumulation of debt, *there ought to be in every government a perpetual, anxious, and unceasing effort to reduce that which at any time exists, as fast as shall be practicable, consistently with integrity and good faith.*"

Extract from a report of the Secretary of the Treasury relative to additional supplies for carrying on the Indian War, presented the 16th of March, 1792.

"The result of mature reflection is, in the mind of the Secretary, a strong conviction that the last of the three expedients which have been mentioned (that was the raising of the sum required, by taxes) is to be preferred to either of the other two."

"Nothing can more interest the national credit and prosperity, than a constant and systematic attention *to husband all the means previously possessed for extinguishing the present debt, and to avoid, as much as possible, the incurring any new debt.*"

"Necessity alone, therefore, can justify the application of any of the public property, other than the annual revenues, to the current service, or to the temporary and casual exigencies of the country—or the contracting of an additional debt, by loans, to provide for those exigencies."

"Great emergencies might exist in which loans would be indispensable. But the occasions which will justify them, must be truly of that description." "The present is not of such a nature. The sum to be provided is not of magnitude enough to furnish the plea of necessity." "Taxes are never welcome to a community. They seldom fail to excite uneasy sensations more or less extensive; hence a too strong propensity in the government of nations to anticipate and mortgage the resources of posterity, rather than encounter the inconveniences of a present increase of taxes."

"But *this policy, when not dictated by very peculiar circumstances, is of the worst kind.* Its obvious tendency is, by enhancing the

permanent burthens of the people, to produce lasting distress, and its natural issue is in national bankruptcy."

"It will be happy if the councils of this country, sanctioned by the voice of an enlightened community, shall be able to pursue a different course."

Here is example added to precept. In pursuit of a doctrine, the opposite of that which is charged upon him, the Secretary did not scruple to hazard the popularity of his administration with a class of citizens, who, as a class, have been among the firmest friends of the government, and the warmest approvers of the measures which have restored public credit. The circumstance indeed has been a weapon dexterously wielded against him by his enemies; who, in consequence of the increase of duties proposed, have represented him as the oppressor of trade. A certain description of men are for getting out of debt, yet are against all taxes for raising money to pay it off; they are among the foremost for carrying on war, and yet will have neither loans nor taxes. They are alike opposed to what creates debt, and to what avoids it.

In the first case their meaning is not difficult to be divined; in the last, it would puzzle any man, not endowed with the gift of second sight, to find it out, unless it be to quarrel with and pull down every man who will not consent to walk in their leading strings; or to throw all things into confusion.

FACT.

AMICUS.

September 11th, 1792.

A writer in the Gazette of Saturday last, after several observations with regard to certain charges which have been lately brought forward against the Secretary of State, proceeds to make or insinuate several charges against another political character.

As to the observations which are designed to exculpate the

Secretary of State, I shall do nothing more than refer to the discussions which have taken place, and appear to be in a train to be pursued in the Gazette of the United States.

As to the charges which have been brought against the other public character alluded to, I shall assert, generally, from a long intimate and confidential acquaintance with him, added to some other means of information, that the matters charged, as far as they are intelligible, are either grossly misrepresented, or palpably untrue.

A part of them is of a nature to speak for itself without comment, the malignity and turpitude of the accuser denoting clearly the personal enemy in the garb of the political opponent.

The subject and the situation of the parties naturally impose silence, but this is not the first attempt of the kind that has been made fruitlessly hitherto, and I doubt not, equally fruitlessly in time to come. An opinion on the experience of 15 years, the greatest part of the time under circumstances affording the best opportunity for an accurate estimate of character, cannot be shaken by slanderous surmises. The charge of which I shall take more particular notice, is contained in the following passage:

"Let him explain the public character, who, if uncontradicted fame is to be regarded, *opposed* the Constitution in the grand convention, because it was too *republican*, and advocated the *British monarchy as the perfect standard* to be approached as nearly as the people could be *made to bear*." This, I affirm to be a gross misrepresentation. To prove it is so, it were sufficient to appeal to a single fact, namely, that the gentleman alluded to, was the only member from the State to which he belonged, who signed the Constitution, and it is notorious against the prevailing weight of the official influence of the State, and against what would probably be the opinion of a large majority of his fellow-citizens, till better information should correct their first impressions.

How, then, can he be believed to have opposed a thing which he actually agreed to, and that in so unsupported a situation, and under circumstances of such peculiar responsibility? To this I shall add two more facts—one, that the member in question,

never made a single proposition to the Convention which was not conformable to the republican theory—the other, that the highest toned of any of the propositions made by him was actually voted for by the representation of several States, including some of the principal ones; and including individuals, who, in the estimation of those, who deem themselves the only republicans, are pre-eminent for republican character—more than this I am not at liberty to say.

It is a matter generally understood, that the deliberations of the Convention, which were carried on in private, were to remain undisturbed. And every prudent man must be convinced of the propriety both of the one and the other. Had the deliberations been open while going on, the clamors of faction would have prevented any satisfactory result; had they been afterwards disclosed, much food would have been afforded to inflammatory declamation. Propositions made without due reflection, and perhaps abandoned by the proposers themselves, on more mature reflection, would have been handles for a profusion of ill-natured accusation.

Every infallible declaimer, taking his own ideas as the perfect standard, would have railed without measure or mercy at every member of the Convention, who had gone a single line beyond his standard.

The present is a period fruitful in accusation—much anonymous slander has and will be vented—no man's reputation can be safe, if charges in this form are to be lightly listened to. There are but two kinds of anonymous charges that can merit attention—where the evidence goes along with the charge—and where reference is made to *specific facts*, the evidence of the truth or falsehood of which is in the power or possession of the party accused, and he at liberty to make a free use of it. None of the charges brought forward in this instance, fall within either of these rules.

AMICUS.

CATULLUS TO ARISTIDES.

For the Gazette of the United States.

I.

Sept. 15th, 1792.

Though there would be no great hazard of mistake in inferring the writer of the paper under the signature of Aristides from "the appropriate and prominent features" which characterize the style of that paper; yet I forbear to imitate the example which has been set, with too little decorum, by naming or describing the supposed author. The similitude of style, or any other circumstance merely probable, is too slight a foundation for so improper a procedure.

Peculiar circumstances which it is not necessary to explain, uniting with the conjecture which is indulged respecting the real Aristides, lead to a change of the original party to the charges. The discussion will be taken up and pursued by one, who is willing to be responsible for the allegations he shall make, and who consequently will not refuse to be known on proper terms, to the officer concerned. It is, however, not meant to invite inquiry on that head. It is most advisable that none should be made. For any public purpose, none will be requisite. For any personal one, none will be proper. What shall be said, will merely apply to public conduct, and will be supported by proof and argument.

Why then, it may be asked, the intimation of a willingness to be known, if required? The answer is merely to put an end to the epithets "cowardly assassin," "striking in the dark," and other tropes and figures of a similar nature. Some rhetoric may be spoiled, but the elucidation of truth will be promoted.

It occurs at once to an observant reader, that Aristides passes over, in total silence, the leading article of charge brought by the

American against Mr. Jefferson, namely,—That he is the *institutor* and *patron* of a certain Gazette published in this city, the object and tendency of which are to vilify and depreciate the government of the United States, to misinterpret and traduce the administration of it, except in the single department of which that gentleman is the head; implicating in the most virulent censure the majorities of both houses of Congress, the heads both of the Treasury and War departments, and sparing not even the Chief Magistrate himself; that in the support of this paper, thus hostile to the government, in the administration of which he holds so important a trust, he has not scrupled to apply the money of that very government, departing by this conduct from the rules of official propriety and obligation, and from the duty of a discreet and patriotic citizen.

This is the leading and main charge, which has been brought by the American against Mr. Jefferson, which he supports in several ways.

1st.—By direct proof of an official connection between the Secretary of State and the editor of the National Gazette, coeval with, or rather antecedent to, the *first establishment* of that paper.

2d.—By the suggestion of his being opposed to the present government of the United States, while it was under the consideration of the people.

3d.—By the suggestion of his being opposed to the principal measures which have been adopted in the course of its administration, particularly those relating to the finances.

The object of the above recapitulation is to show the true original state of the question, in order that it may be clearly seen how entirely Aristides, in his defence, loses sight of the principal point, and contents himself with an indirect endeavor to involve it in uncertainty, by disputing or denying some positions which form only the collateral evidence.

It will now remain to see how the charges of the American have been and can be supported.

As to the connection between the Secretary of State and the editor of the National Gazette, neither of the following facts

can or will be disputed. If any of them should be denied, it will be proved beyond the possibility of doubt.

1st.—That the editor of the National Gazette is a clerk in the Department of State for foreign languages, and as such receives a salary of two hundred and fifty dollars a year.

2d.—That he became so, antecedent to the establishment of his Gazette, having actually received his salary from the 17th August, 1791, and not having published the first number of his paper till the 31st of October following.

3d.—That at the time he became so, there was another character, a clerk, in the same department, who understood the French language; and that the editor of the National Gazette is a translator of that language only.

4th.—That the appointment was not made under any special provision, marking out a particular clerkship of the kind, its duties, or its emoluments; but, under a general authority to appoint clerks, and allow them salaries not exceeding the average of 500 dollars to each.

5th.—That the editor of the National Gazette, *immediately* preceding the establishment of that paper, was the superintendent or conductor of a paper belonging to Childs and Swaine, printed at New-York.

These are the facts: the conclusion is irresistible. The secret intentions of men being in the repositories of their own breasts, it rarely happens, and is therefore not to be expected, that direct and positive proof of them can be adduced.

Presumptive facts and circumstances must afford the evidence; and when these are sufficiently strong they ought to decide.

We find the head of a department taking the editor of a Gazette into his employment, as a clerk, with a stated salary—not for any special purpose, which could not have been accomplished otherwise; for he had, at the time, in his department, a clerk who was capable of performing the very service required, and could without difficulty have procured others similarly qualified; nor from any particular necessity arising from a too limited allowance, or any other cause; for he had it in his power to allow an adequate compensation to a character who might have been regularly attached to the department.

The very existence of such a connection, then, is alone a sufficient foundation for believing that the design of the arrangement was to secure an influence over the paper, the editor of which was so employed. But the circumstances which attend it explain the nature of it beyond a doubt. That which has been just mentioned, namely, there having been previously a clerk in the department qualified to render the service, is a weighty one. The coming of a *new* printer, from another State, to institute a *new* paper, his having been appointed clerk in the department *prior* to his removal to this city—his having been compensated *before* he was even present, to satisfy the *appearance* of his rendering service; these circumstances give a point and energy to the language of the transaction which render it unequivocal. There perhaps never was a more flimsy covering for the pensioning of a printer. Some ostensible ground for giving him the public money was necessary to be contrived—the clerkship of foreign languages was deemed a plausible pretext. But no man acquainted with human nature, or with the ordinary rules of political intrigue, can be deceived by it.

The medium of negotiation between the Secretary of State and Mr. Freneau, in order to the institution of his paper, is known, and documents are possessed which ascertain the person, but they are at present withheld, from considerations of a particular nature. These are the more readily yielded to, because the facts which have been stated render it unnecessary to exhibit them. These facts prove, to the satisfaction of every impartial mind, that Mr. Jefferson is the Institutor and Patron of the National Gazette.

As to the complexion and tendency of that Gazette, a reference to itself is sufficient. No man, who loves the government, or is a friend to the public tranquillity, but must reprobate it as an incendiary and pernicious publication, and condemn the auspices under which it is supported.

In another paper, the charges which have occasioned so much umbrage to Aristides will be more correctly stated and enforced. The precise terms of the advice which was given by Mr. Jefferson to Congress, respecting the transfer of the French debt to a company of Hollanders, will be recited.

This characteristic trait in the political principles of that gentleman, will be submitted to the honest feelings not only of the great body of the yeomanry, to whom such affected appeals are so often made, but to honest men of whatsoever class and condition.

CATULLUS.

II.

Sept 19th, 1792.

The "American," to confirm the inferences resulting from the official connection between the Secretary of State and the editor of the National Gazette, appeals to a conformity of the political principles and views of that officer with those which are sedulously inculcated in that Gazette. If this conformity exists, it certainly affords a strong presumption, in aid of direct facts, of the operation of his influence on the complexion of that paper.

The circumstances of conformity alleged, fall under two heads; one, That the Secretary of State was in the origin opposed to that Constitution, which it is the evident object of the National Gazette to discredit: the other, That he has been, and is, opposed to those measures which it is the unremitted, and, it may be said, the avowed endeavor of that paper to censure and subvert.

In contradiction to the first suggestion, Aristides cites an authority, which the American appears to have relied upon in support of his assertion; the speech of Mr. Pendleton in the Convention of Virginia. Let an analysis of this speech show whether it supports or contradicts the assertion.

Mr. Pendleton represents a certain letter of Mr. Jefferson as containing these particulars—a strong wish that the *first nine conventions* may accept the new Constitution because it would secure the *good* it contains, which is *great* and *important*. 2d. A wish that the four latest, whichever they should be, might refuse to accede to it till *amendments were secured*. 3d. A caution to take

care that no objection to the form of the government should produce a schism in the Union; which Mr. Jefferson admits to be an incurable evil.

From this it appears, that though Mr. Jefferson was of opinion that the Constitution contained "great and important good," and was desirous that the first nine deliberating States should consent to it for the sake of preserving the existence of the Union, yet he had strong objections to the Constitution; so strong, that he was willing to risk an *ultimate dismemberment* in an experiment to obtain the alterations which he deemed necessary.

If the four last deliberating States (particularly if they had happened to be States in geographical contiguity, which was very possible) had refused to ratify the Constitution, what might not have been the consequence? Who knows whether the assenting States would have been willing to have been *coerced* into the amendments which the non-assenting States might have been disposed to dictate? Calculating the intrigues and machinations which were to have been expected to stand in the way, who can say, if even two-thirds of both houses of Congress should have been found willing to propose that three-fourths of the legislatures, or conventions, in three-fourths of the States would have been brought to adopt the required amendments?

Could any thing but objections to the Constitution of the most *serious* kind have justified the hazarding an eventual schism in the UNION, in so great a degree as would have attended an adherence to the advice given by Mr. Jefferson? Can there be any perversion of truth in affirming that the person who entertained those objections was opposed to the Constitution?

The opposition which was experienced in every part of the United States, acknowledged the necessity and utility of the Union; and, generally speaking, that the Constitution contained many valuable features; contending only that it wanted some essential alterations to render it upon the whole a safe and good government.

It may be satisfactory to review what was said in the same convention of Virginia by some other members on the subject of the letter in question.

Mr. Henry (p. 109 of the "Debates") replies thus to Mr. Pendleton:—"The honorable gentleman has endeavored to *explain* the opinion of Mr. Jefferson, our common friend, *into* an advice to adopt this new government. He wishes nine States to adopt, and that four States may be found somewhere to reject it. Now, sir, I say, if we pursue his advice, what are we to do? To prefer form to substance? for give me leave to ask, what is the substantial part of his counsel? It is, sir, that four States should reject. They tell us that, from the most authentic accounts, New Hampshire will adopt it. Where then will four States be found to reject, if we adopt it? If we do, the counsel of this worthy and enlightened countryman of ours will be thrown away," &c. Whether this gentleman argued sincerely from his impression of the true import of the letter, or made an attempt "to pervert Mr. Jefferson's sentiments," as Aristides affirms, must be reserved to his own consciousness, and to the candid construction of an impartial public.

Mr. Madison, in reply to Mr. Henry (p. 122 of the same Debates), expresses himself thus:—"The honorable member, in order to influence our decision, has mentioned the opinion of a citizen, who is an ornament to this State. When the name of this distinguished character was introduced, I was much surprised. *Is it come to this, then, that we are not to follow our own reason?* Is it proper to adduce the opinions of respectable men, not within these walls? If the opinion of an important character were to weigh on this occasion, could we not adduce a character equally great on our side? Are we, who (in the honorable gentleman's opinion) are not to be guided by an erring world, *now to submit to the opinion of a citizen beyond the Atlantic?* I believe that were that gentleman now on this floor, he would be for the adoption of this Constitution. I wish his name had never been mentioned; I wish every thing spoken here relative to his opinion, may be suppressed, if our debates should be published. I know that the delicacy of his feelings will be wounded, when he will see in print what has and may be said concerning him on this occasion. I am in some measure acquainted with his sentiments on this subject. *It is not right for me to un-*

fold what he has informed me. But I will venture to assert that the clause now discussed is not objected to by Mr. Jefferson. He approves of it, because it enables the government to carry on its operations," &c. It is observable that Mr. Madison neither advocates the accuracy of Mr. Pendleton's comment nor denies the justice of that of Mr. Henry. His solicitude appears to be to destroy the influence of what he impliedly admits to be the opinion of Mr. Jefferson, to press out of sight the authority of that opinion, and to get rid of the subject as fast as possible. He confesses a knowledge of Mr. Jefferson's sentiments, but prudently avoids disclosure, wrapping the matter in mysterious reserve, and leaving the public to this day to conjecture what was the precise import of the sentiments communicated. Enough, however, is seen to justify the conclusion, that if the spirit of Mr. Jefferson's advice had prevailed with the convention, and full credence had been given to the expected adoption by New Hampshire, Virginia, North Carolina, New-York, and Rhode Island, would have temporarily thrown themselves out of the Union. And whether in that event, they would have been at this day re-united to it, or whether there would be now any Union at all, is happily a speculation which need only be pursued to derive the pleasing reflection, that the danger was wisely avoided.

To understand more accurately what the "American" meant in asserting that Mr. Jefferson had been opposed to the Constitution, let him be compared with himself. In his first paper he expresses himself thus:—"While the Constitution of the United States was depending before the people of this country for their consideration and decision, Mr. Jefferson being in France was *opposed* to it in some of *its most important features*, and wrote his objections to some of his friends in Virginia. He *at first* went so far as to *discountenance its adoption;* though he *afterwards recommended* it on the ground of expediency in certain contingencies."

From this it is evident, that so far from denying, he has even admitted that Mr. Jefferson, at *one stage* of the business, *recommended* the adoption of the Constitution to his fellow-citizens, but upon a contingency. And this is literally the fact, as estab-

lished by the letter quoted in the debates of the convention. The advice is to adopt, if nine States had not previously adopted; to reject, if that number of States had previously adopted. This is clearly to adopt, or not, upon a contingency. Thus the authority appealed to by "Aristides" confirms the latter part of the American's assertion, without contradicting the former part of it.

Aristides has not denied, nor do I believe he will deny, that Mr. Jefferson, in his early communications, discountenanced the adoption of the Constitution in its primitive form. I know the source of the American's information. It is equally authentic and friendly to Mr. Jefferson. Allowing for the bare possibility of misapprehension, it exactly accords with the statement which has been made of it. If the fact shall be denied, the source of information will be indicated, under due guards for the delicacy of the proceeding.

This will serve either to confirm, or, in case of misconception, to correct.

I add, that some of Mr. Jefferson's objections to the Constitution have not been removed by the amendments which have been proposed. Part of his objections went to the structure of particular parts of the government.

As to the second fact which the "American" corroborates, the charge of Mr. Jefferson's participation in the views of the National Gazette, it is in a degree conceded by "Aristides." He confesses, nay, he even *boasts* Mr. Jefferson's *abhorrence* of some of the leading principles of Mr. Hamilton's fiscal administration, —that is, the leading principles of those measures which have provided for the public debt and restored public credit.

It would have been well if "Aristides" had told us what those leading principles are which are the objects of so much abhorrence to Mr. Jefferson.

The leading principles of Mr. Hamilton's administration have been—that the public debt ought to be provided for, in favor of those who, according to the express terms of the contract, were the true legal proprietors of it; that it ought to be provided for, in other respects, according to the terms of the contract, except so

far as deviations from it should be assented to by the creditors, upon the condition of a fair equivalent—that it ought to be funded on *ascertained* revenues *pledged* for the payment of interest, and the gradual redemption of principal—that the debts of the several States ought to be comprised in the provisions, on the same terms with that of the United States—that to render this great operation practicable, avoid the oppression of trade and industry, and facilitate loans to the government in cases of emergency, it was necessary to institute a national bank—that indirect taxes were, in the actual circumstances of the country, the most eligible means of revenue; and that direct taxes ought to be avoided as much and as long as possible.

I aver, from competent opportunities of knowing Mr. Jefferson's ideas, that he has been hostile to all these positions, except, perhaps, the last; and that even in regard to that, his maxims would oblige the government in practice speedily to resort to direct taxes.

I aver, moreover, that Mr. Jefferson's opposition to the administration of the government has not been confined to the measures connected with the Treasury Department, but has extended, to use the words of the American, to almost all the important measures of the government. The *exceptions* to the generality of both the preceding assertions, I am content to rest on a designation by Mr. Jefferson, or by any person, who shall speak from a knowledge of his sentiments, of those principles of the fiscal department, or of those measures of the government of any importance, which he does *approve*. I insist only, that the designation be precise and explicit, and come with such marks of authenticity, as are adapted to the nature of an anonymous discussion.

To give an idea of the accuracy with which Aristides discloses Mr. Jefferson's opinions, I shall cite one of his phrases with a short observation. He asserts that a suggestion against Mr. Jefferson, which he states, is made on no better foundation than his being opposed to *some* of the principles of the funding system, of the national bank, and certain other measures of the Secretary of the Treasury. It is matter of general notoriety, and

unquestionable certainty, that Mr. Jefferson has been opposed to the national bank in toto, to its constitutionality, and to its expediency. With what propriety is it then said, that he has been opposed only to "*some* of the principles of that institution."

I proceed now to state the exact tenor of the advice which Mr. Jefferson gave to Congress respecting the transfer of the debt due to France to a company of Hollanders. After mentioning an offer which had been made by such a company for the purchase of the debt, he concludes with these extraordinary expressions, "If there is a *danger* of the public payment *not being punctual*, I submit whether it may not be better, that *the discontents which would then arise* should be *transferred* from a *court* of whose *good will we have so much need* to the *breasts* of a *private company*."

The above is an extract which was made from the letter in Feb., 1787. The date of it was not noted, but the original being on the files of the Department of State, will ascertain that and all other particulars relating to its contents. The genuineness of the foregoing extract may be depended upon.

This letter was the subject of a report from the Board of Treasury in Feb., 1787. That board treated the idea of the transfer proposed, as both unjust and impolitic :—unjust, because the nation would contract an engagement which there was no well-grounded prospect of fulfilling; impolitic, because a failure in the payment of interest, on the debt transferred (which was *inevitable*), would *justly blast* all hopes of credit with the citizens of the United Netherlands in future pressing exigencies of the Union; and gave it as their opinion, that it would be advisable for Congress, *without delay*, to instruct their minister at the court of France, to forbear giving his sanction to any such transfer.

* * * * * * *

Congress agreeing in the ideas of the board, caused an instruction to that effect to be sent to Mr. Jefferson. Here, then, was a solemn act of government condemning the principle as unjust and impolitic.

If the sentiment contained in the extract which has been recited, can be vindicated from the imputation of political *profligacy*,

then is it necessary to unlearn all the ancient notions of justice, and to substitute some new-fashioned scheme of morality in their stead.

Here is no complicated problem which sophistry may entangle or obscure. Here is a plain question of *moral feeling.* A government is encouraged, on the express condition of *not having a prospect* of making a due provision for a debt which it owes, to concur in a transfer of that debt, from a nation well able to bear the inconveniences of failure or delay, to individuals whose total ruin might have been the consequence of it, and that upon the *interested* consideration of having need of the good will of the creditor nation, and, with the dishonorable motive, as it is clearly implied, of having more to apprehend from the discontents of that nation, than from those of disappointed and betrayed individuals. Let every honest and impartial mind, consulting its own spontaneous emotions, pronounce for itself upon the rectitude of such a suggestion. Let every sober and independent member of the community decide whether it is likely to be a misfortune to the country, that the maxims of the officer at the head of its Treasury Department are materially variant from those of the author of that suggestion.

And let Aristides prove, if he can, that Mr. Jefferson gave advice "expressly contrary to that which has been ascribed to him." Amidst the eccentric ramblings of this political comet, its station in another revolution will not prove that its appearance was not, at one time, at the place which has been assigned for it.

The American, it ought to be confessed, has in this instance drawn larger than the life. This he has done by blending with the fact the sudden though natural comments of an honest indignation. But the original itself, in its true size and shape, without the help of the least exaggeration, is to the moral eye a deformed and hideous monster.

Say, Aristides! did the character to whom you are so partial, imitate, in this case, the sublime virtue of that venerable Athenian, whose name you have assumed—did he dissuade his countrymen from adopting a proposition, because though "nothing could be more advantageous, nothing could be more unjust?"

Did he not rather advise them to do what was both *disadvantageous and unjust?* May he not, as a public man, discard all apprehension of *ostracism*, for being the *superlatively just.*

CATULLUS.

P. S. Some additional observations are reserved for another paper.

III.

Sept. 29th, 1792.

Aristides complains that the American has charged Mr. Jefferson with being the patron and promoter of *national disunion, national insignificance, public disorder,* and *discredit.* The American, however, has only-affirmed, that "the real or pretended political tenets of that gentleman *tend*" to those points.

The facts which have been established clearly demonstrate, that, in the form in which it is made, the charge is well founded.

If Mr. Jefferson's opposition to the funding system, to the bank, and to the other measures which are connected with the administration of the national finances, had ceased, when those measures had received the sanction of law; nothing more could have been said, than, he had transgressed the rules of official decorum, in entering the lists against the head of another department (between whom and himself there was a reciprocal duty to cultivate harmony), that he had been culpable in pursuing a line of conduct, which was calculated to sow the seeds of discord in the executive branch of the government, in the infancy of its existence.

But when his opposition extended beyond that point, when it was apparent, that he wished to *render odious*, and of course to *subvert* (for in a popular government these are convertible terms), all those deliberate and solemn acts of the legislature, which had become the pillars of the public credit, his conduct deserved to be regarded with a still severer eye.

Whatever differences of opinion may have preceded those acts, however exceptionable particular features in them may have appeared to certain characters, there is no enlightened nor discreet citizen but must agree, that they ought *now* to remain *undisturbed.* To set afloat the funding system, after the faith of the nation has been so deliberately and solemnly pledged to it—after such numerous and extensive alienations of property for full value have been made under its sanction—with adequate revenues little burthensome to the people—in a time of profound peace*—with not even the shadow of any public necessity—on no better ground than that of theoretical and paradoxical dogmas—would be one of the most wanton and flagitious acts, that ever stained the annals of a civilized nation.

Yet positions tending to that disgraceful result have been maintained, in public discourses, by individuals known to be devoted to the Secretary of State; and have been privately smiled upon as profound discoveries in political science.

Yet the less discreet, though not least important partizans of that officer, talk familiarly of undoing the funding system as a meritorious work. Yet his Gazette (which may fairly be regarded as the mirror of his views), after having labored for months to make it an object of popular detestation, has at length told us in plain and triumphant terms, that "the funding system has had its day;" and very clearly, if not expressly, that it is the object of the party to overthrow it.

The American, then, has justly, and from sufficient data, inferred, that Mr. Jefferson's politics, whatever may be the motives of them, *tend* to national disunion, insignificance, disorder, and discredit. That the subversion of the funding system would produce national discredit proves itself. Loss of credit, the reason being the same, must attend nations, as well as individuals who voluntarily and without necessity, violate their formal and positive engagements.

Insignificance and disorder, as applied to communities, equally

* The partial Indian hostilities which exist can hardly be deemed an interruption of the general peace.

with individuals, are the natural offspring of a loss of credit, premeditatedly and voluntarily incurred.

Disunion would not long lag behind. Soberminded and virtuous men in every State would lose all confidence in, and all respect for a government, which has betrayed so much levity and inconstancy, so profligate a disregard to the *rights of property* and to the obligations of good faith. Their support would of course be so far withdrawn or relaxed, as to leave it an easy prey to its enemies. These comprise the advocates for separate confederacies; the jealous partizans of unlimited sovereignty, in the State governments—the never to be satiated lovers of innovation and change—the tribe of pretended philosophers, but real fabricators of chimeras and paradoxes, the Catalines and the Cæsars of the community (a description of men to be found in every republic), who, leading the dance to the tune of liberty without law, endeavor to intoxicate the people with delicious but poisonous draughts to render them the easier victims of their rapacious ambition; the vicious and fanatical of every class who are ever found the willing or deluded followers of those seducing and treacherous leaders.

But this is not all—the invasion of sixty millions of property could not be perpetrated without violent concussions. The States, whose citizens, both as *original* creditors and *purchasers* own the largest portions of the debt (and several such there are), would not remain long bound in the trammels of a party which had so grossly violated their rights. The consequences in experiment would quickly awaken to a sense of injured right, and interest such of them, whose representatives may have wickedly embarked, or been ignorantly betrayed into the atrocious and destructive project.

Where would all this end but in disunion and anarchy?—in national disgrace and humiliation?

Aristides insinuates, that the American has distinguished Mr. Jefferson, as "the Cataline of the day—the ambitious incendiary." Those epithets are not to be found in either of the papers under that signature. But the American has said, that Mr. Jefferson "has been the prompter, open or secret, of unwarrantable asper-

sions on men, who, as long as actions, not merely professions, shall be the true tests of patriotism and integrity, need never decline a comparison with him of their titles to the public esteem," and he is supported in the assertion by facts.

Not to cite or trace those foul and pestilent whispers which, clandestinely circulating through the country, have, as far as was practicable, contaminated some of its fairest and worthiest chacters, an appeal to known circumstances will justify the charge.

Some time since, there appeared in print certain speculations, which have been construed into an advocation of hereditary distinctions in government. These (whether with or without foundation, is to this moment matter of conjecture) were ascribed to a particular character, pre-eminent for his early, intrepid, faithful, persevering and comprehensively useful services to his country—a man, pure and unspotted in private life, a citizen having a high and solid title to the esteem, the gratitude, and the confidence of his fellow-citizens.

The first volume of the "Rights of Man," makes its appearance. The opportunity is eagerly seized, to answer the double purpose of wounding a competitor, and of laying in an additional stock of popularity; by associating and circulating the name of Thomas Jefferson, with a popular production of a favorite writer, on a favorite subject.

For this purpose, the Secretary of State sits down and pens an epistle to a printer in the city of Philadelphia, transmitting the work for republication, and expressing his approbation of it in a way which we learn, from the preface of that printer to his edition of the work, was calculated not only to do justice to the rights of Mr. Paine, but to do honor to Mr. Jefferson; by *directing the mind* to a contemplation of that *republican firmness* and *democratic simplicity*, which ought to *endear him* to every friend to the "Rights of Man."

The letter, as we learn from the same preface, contained the following passages: "I am extremely pleased to find it will be reprinted here, and that something is at length to be publicly said against the *political heresies* which have sprung up among

us." "I have no doubt our citizens will *rally* a second time round the *standard* of common sense."

There was not a man in the United States acquainted with the insinuations which had been propagated, who did not instantly apply the remark, and the signal was so well understood by the partisans of the writer, that a general attack immediately commenced. The newspapers in different States resounded with invective and scurrility against the patriot, who was marked out as the object of persecution, and if possible, of degradation.

Under certain circumstances, general expressions designate a person or an object as clearly as an indication of it by name. So it happened in the present case. The javelin went directly to its destination.

But it was quickly perceived that discerning and respectable men disapproved the step. It was of consequence to endeavor to maintain their good opinion. Protestations and excuses as frivolous as awkward were multiplied to veil the real design.

"The gentleman alluded to, never once entered into the mind. It was never imagined that the printer would be so incautious as to publish the letter or any part of it. Nothing more was in view than to turn a handsome period, and avoid the *baldness* of a note that did nothing but present the compliments of the writer."

Thus a solemn invocation to the people of America, on the most serious and important subject, dwindled at once into a brilliant conceit, that tickled the imagination too much to be resisted. The imputation of levity was preferred to that of malice.

But when the people of America presented themselves to the disturbed patriotic fancy, as a routed host, scattered and dispersed by political sorcerers; how was it possible to resist the heroic, the chivalrous desire of erecting for them some magic standard of orthodoxy, and endeavoring to rally them round it for mutual protection and safety?

In so glorious a cause, the considerations that a citizen of the United States had written in a foreign country a book containing strictures on the government of that country which would be

regarded by it as libellous and seditious, that he had *dedicated* this book to the Chief Magistrate of the Union, that a republication of it under the auspices of the Secretary of State, would wear the appearance of its having been promoted, at least of its being patronized by the government of this country, were considerations too light and unimportant to occasion a moment's hesitation or pause.

Those who, after an attentive review of circumstances, can be deceived by the artifices, which have been employed to varnish over this very exceptionable proceeding, must understand little of human nature, must be little read in the history of those arts, which in all countries and at all times have served to disguise the machinations of factious and intriguing men.

The remaining circumstance of public notoriety, which fixes upon Mr. Jefferson the imputation of being the prompter or instigator of detraction, exists in his patronage of the National Gazette.

Can any attentive reader of that Gazette, doubt for a moment that it has been systematically devoted to the calumniating and blackening of public characters? Can it be a question, that a main object of the paper is to destroy the public confidence in a particular public character, who it seems is to be *hunted down* at all events, for the unpardonable sin of having been the steady, invariable, and decided friend of broad national principles of government? Can it be a question, that the persecution of the officer alluded to, is agreeable to the views of the institutor of the paper?

Does all this proceed from motives purely disinterested and patriotic? Can none of a different complexion be imagined, that may at least have operated to give a *stimulus* to *patriotic zeal?*

No. Mr. Jefferson has hitherto been distinguished as the quiet, modest, retiring philosopher; as the plain, simple, unambitious republican. He shall not now, for the first time, be regarded as the intriguing incendiary, the aspiring turbulent competitor.

How long it is since that gentleman's real character may have been *divined*, or whether this is only the *first time*, that the *secret*

has been disclosed, I am not sufficiently acquainted with the history of his political life to determine; but there is always a "*first time*" when characters studious of artful disguises are unveiled; when the vizor of stoicism is plucked from the brow of the epicurean; when the plain garb of Quaker simplicity is stripped from the concealed voluptuary; when Cæsar *coyly refusing* the proffered diadem, is seen to be Cæsar rejecting the trappings, but tenaciously grasping the substance of imperial domination.

It is not unusual to defend one post by attacking another. Aristides has shown a disposition to imitate this policy. He by clear implication tells us, and doubtless means it as a justification of the person whom he defends, that attachment to *aristocracy, monarchy, hereditary succession*, a titled order of nobility, and all the *mock pageantry* of Kingly government, form the appropriate and prominent features in the character to which he boasts Mr. Jefferson's opposition, and which it seems to be a principal part of the business of his Gazette to depreciate. This is no more than what has been long matter for malevolent insinuation. I mistake, however, the man to whom it is applied, if he fears the strictest scrutiny into his political principles and conduct; if he does not wish there "were windows in the breast," and that assembled America might witness the inmost springs of his public actions. I mistake him—however a turn of mind less addicted to *dogmatizing* than *reasoning*, less fond of hypotheses than experience, may have led to speculative doubts concerning the probable success of the republican theory—if he has not uniformly and ardently, since the experiment of it began in the United States, *wished* it success; if he is not sincerely desirous that the sublime idea of a perfect equality of rights among citizens, exclusive of hereditary distinctions, may be practically justified and realized; and if among the sources of the regret which his language and conduct have testified, at the overdriven maxims and doctrines that too long withstood the establishment of firm government in the United States, and now embarrass the execution of the government which has been established, a *principal one* has not been their tendency to counteract a *fair*

trial of the theory to which he is represented to be adverse. I mistake him, if his measures proceeding upon the ground of a liberal and efficient exercise of the powers of the national government, have had any other object than to give it stability and duration: *the only solid and rational expedient for preserving republican government in the United States.*

It has been pertinently remarked by a judicious writer, that *Cæsar*, who *overturned* the republic, was the Whig, Cato, who *died* for it, the Tory of Rome; such, at least, was the common cant of political harangues, the insidious tale of hypocritical demagogues.

CATULLUS.

IV.

October 17th, 1792.

Attempts in different shapes have been made to repel the charges which have been brought against the Secretary of State. The defence of him, however, in the quarter in which he has been principally assailed, has hitherto gone no further than a mere show of defending him. I speak as to his improper connection with the editor of the National Gazette. But a more serious and more plausible effort has been made to obviate the impression which arises from his having been originally an objector to the present Constitution of the United States.

For this purpose several letters said to have been written by Mr. Jefferson while in Europe have been communicated. How far they are genuine letters or mere fabrications; how far they may have been altered or mutilated, is liable, from the manner of their appearance, to question and doubt. It is observable also, that the extract of a letter of the 6th July, contained in the American Daily Advertiser of the 10th instant, though it seems to be intended as part of the one which is mentioned in the Debates of the Virginia Convention, does not answer to the description given of it by Mr. Pendleton, who professes to have

seen it. For Mr. Pendleton expressly states with regard to that letter, that Mr. Jefferson, after having declared his wish respecting the issue of the deliberations upon the Constitution, proceeds to *enumerate the amendments which he wishes to be secured.* The extract which is published, speaks only of a *bill of rights*, as the essential amendment to be obtained by the rejection of four States, which by no means satisfies the latitude of Mr. Pendleton's expressions.

Such, nevertheless, as it is, it affords an additional confirmation of that part of the American's statement, which represents Mr. Jefferson as having advised the people of Virginia to adopt or not *upon a contingency.*

It happens likewise, that the letters which have been communicated tend to confirm the only parts of the American's statement of the sentiments and conduct of Mr. Jefferson, in relation to the Constitution, which remained to be supported; namely, "that he was opposed to it *in some of its most important features*, and at first went so far as to discountenance its adoption." By this I understand without previous amendments.

From the first of those letters, dated "Paris, the 20th December, 1787," it appears that Mr. Jefferson among other topics of objection "disliked, and *greatly* disliked, the abandonment of the principle of rotation in office, and *most particularly* in the case of President," from which the inference is clear, that he would have wished the principle of rotation to have extended not only to the executive, but to the other branches of the government, to the Senate at least, as is explained by a subsequent letter. This objection goes to the structure of the government in a very important article; and while it justifies the assertion that Mr. Jefferson was opposed to the Constitution, *in some of its most important features*, it is a specimen of the visionary system of politics of its author. Had it been confined to the office of Chief Magistrate, it might have pretended not only to plausibility but to a degree of weight and respectability. By being extended to other branches of the government, it assumes a different character, and evinces a mind prone to projects which are incompatible with the principles of stable and systematic government, dis-

posed to multiply the outworks, and leave the citadel weak and tottering.

But the *fact* not the *merit* of the objection is the material point. In this particular, it comes fully up to the suggestion which has been made.

It now only remains to see how far it is proved, that Mr. Jefferson at first *discountenanced* the adoption of the Constitution in its primitive form.

Of this, a person acquainted with the manner of that gentleman, and with the force of terms, will find sufficient evidence in the following passage: "*I do not pretend to decide*, what would be the best method of procuring the establishment of the manifold good things in the Constitution, and of *getting rid of the bad:* whether by adopting it *in hopes* of future amendment; or after it has been duly weighed and canvassed by the people: after seeing the parts they generally dislike, and those they generally approve, to say to them, We see now what you wish—send together your deputies again—let them frame a Constitution for you, omitting what you have condemned, and establishing the powers you approve."

Mr. Jefferson did not explicitly decide which of these two modes was best, and while *it is clear* that he had not *determined in favor* of an adoption without previous amendments, it is not difficult to infer from the terms of expression employed, that he preferred the last of the two modes; a recurrence to a second convention. The faintness of the phrase "*in hopes* of future amendment," and the emphatical method of displaying the alternative, are sufficient indications of the preference he entertained.

The pains which he takes in the same letter to remove the alarm naturally inspired by the insurrection which had happened in Massachusetts, are an additional illustration of the same bias. It is not easy to understand what other object his comments on that circumstance could have, but to obviate the anxiety which it was calculated to inspire, for an adoption of the Constitution, without a previous experiment to amend it.

It is not possible to avoid remarking by the way, that these comments afford a curious and characteristic sample of logic and

calculation. "One rebellion, in *thirteen* States, in the course of *eleven* years, is but one for each State in a century and a half;" while France, it seems, had had three insurrections in three years. In the latter instance the subdivisions of the entire nation are confounded in one mass; in the former, they are the ground of calculation. And thus a miserable sophism is gravely made a basis of political consolation and conduct. For, according to the data stated, it was as true that the United States had had one rebellion in eleven years, endangering their common safety and welfare, as that France had had three insurrections in three years.

Thus it appears from the very documents produced in exculpation of Mr. Jefferson, that he in fact discountenanced, in the first instance, the adoption of the Constitution, favoring the idea of an attempt at previous amendments by a second convention; which is the only part of the allegation of the American that remained to be established.

As to those letters of Mr. Jefferson which are subsequent to his knowledge of the ratification of the Constitution by the requisite number of States, they prove nothing but that Mr. Jefferson was willing to play the politician.

They can at best only be received as acts of submission to the opinion of the majority which he professes to believe infallible, resigning to it, with all possible humility, not only his *conduct* but his *judgment*.

It will be remarked that there appears to have been no want of versatility in his opinions. They kept pace tolerably well with the progress of the business, and were quite as accommodating as circumstances seemed to require. On the 31st July, 1788, when the adoption of the Constitution was known, the various and weighty objections of March, 1787, had resolved themselves into the simple want of a bill of rights; in November following, on the strength of the authority of three States (overruling in that instance the maxim of implicit deference for the opinion of a majority), that lately solitary defect acquires a companion in a revival of the objection to the perpetual re-eligibility of the President. And another convention, which appeared no

very alarming expedient while the entire Constitution was in jeopardy, became an object *to be deprecated*, when partial amendments to an already established Constitution were alone in question.

From the fluctuations of sentiment which appear in the letters that have been published, it is natural to infer, that had the whole of Mr. Jefferson's correspondence on the subject been given to the public, much greater diversities would have been discovered.

In the preface to the publication of the letters under consideration, the question is put, "Wherein was the merit or offence of a favorable or unfavorable opinion of the Constitution, and to whom rendered?"

It is a sufficient answer to this question, as it relates to the present discussion, to say, that the intimation which was given of Mr. Jefferson's dislike of the Constitution, in the first instance, was evidently not intended as the imputation of a positive crime, but as one link in a chain of evidence tending to prove that the National Gazette was conducted under his auspices, and in conformity to his views.

After showing that the editor of that paper was in his pay, and had been taken into it some short time previous to the commencement of the publication, the inference resulting from the circumstance, of that paper being a political engine, in his hands, is endeavored to be corroborated, first, by the suggestion that Mr. Jefferson had originally serious objections to the Constitution; secondly, by the further suggestion, that he has disapproved of most of the imporant measures adopted in the course of the administration of the government.

In this light, and with this special reference, were those suggestions made, and certainly as far as they are founded in fact, the argument they afford is fair and forcible. A correspondency of the principles and opinions of Mr. Jefferson, with the complexion of a paper, the conductor of which is in the regular pay of his department, is surely a strong confirmation of the conclusion—that the paper is conducted under his influence, and agreeably to his views.

Nothing but a known opposition of sentiment on the part of Mr. Jefferson to the doctrines inculcated in the National Gazette, could obviate the inference deducible from his ascertained and very extraordinary connection with it. A coincidence of sentiments is a direct and irresistible confirmation of that inference.

An effort scarcely plausible has been made by another Aristides* to explain away the turpitude of the advice, which was given respecting the French debt. It is represented that a company of adventuring speculators had offered to purchase the debt at a discount, foreseeing the delay of the payment, calculating the probable loss, and willing to encounter the hazard. The terms employed by Mr. Jefferson refute this species of apology. His words are: "If there is *a danger* of the public payments *not being punctual*, I submit whether it may not be better, that *the discontents which would then arise*, should be *transferred from a court*, of whose *good will we have so much need*, to the *breasts* of a *private company*."

He plainly takes it for granted that *discontents would arise* from the want of an adequate provision, and proposes that they should be *transferred* to the breasts of individuals. This he could not have taken for granted if, in his conception, the purchasers had calculated on delay and loss.

The true construction then is, that the company expected to purchase at an under value, from the probability that the court of France might be willing to raise a sum of money on this fund, at a sacrifice,—supposing that the United States, counting on her friendly indulgence, might be less inclined to press the reimbursement, not that they calculated on material delay or neglect when the transfer should be made to them. They probably made a very different calculation (to wit), that as it would be ruinous to the credit of the United States abroad, to neglect any part of its debt which was contracted there with *individuals*, from the impossibility of one part being distinguishable from another in the public apprehension; this consideration would stimulate to

* The total dissimilarity of style and manner, leaves no doubt that the writer of the first piece signed "Aristides," is a different person from the writer of the last. The forces are well marshalled.

exertions to provide for it. And so it is evident, from his own words, that Mr. Jefferson understood it.

But the persons who offered to purchase were speculators. The cry of speculation as usual is raised, and this, with some people, is the panacea, the universal cure for fraud and breach of faith.

It is true, as alleged, that Mr. Jefferson mentioned an alternative, the obtaining of money by new loans, to reimburse the court of France; but this is not mentioned in any way that derogates from, or waives the advice given in the first instance. He merely presents an alternative, in case the first idea should be disapproved.

It may be added, that the advice respecting the transfer of the debt *was* little more honorable to the United States as it regarded the court of France, than as it respected the Dutch company. What a blemish on our national character, that a debt of so sacred a nature should have been transferred at so considerable a loss to so meritorious a creditor!

A still less plausible effort has been made to vindicate the National Gazette from the charge of being a paper devoted to the calumniating and depreciating the government of the United States. No original performance in defence of the government or its measures, has, it is said, been refused by the editor of that paper. A few publications of that tendency have appeared in it, principally, if not wholly, since the public detection of the situation of its conductor.

What a wretched apology! Because the partiality has not been so daring and unprecedented, as to extend to a refusal of original publications in defence of the government, a paper which industriously copies every inflammatory publication against it that appears in any part of the United States; and carefully avoids every answer which is given to them, even when specially handed to the editor for the purpose, is not to be accounted a malicious and pernicious engine of detraction and calumny towards the government!!!

But happily here no proof nor argument is necessary. The true character and tendency of the paper may be left to the evi-

dence of every reader's senses and feelings. And Aristides, as often as he looks over that paper, must blush, if he can blush, at the assertion "that it has *abounded* since its commencement with publications in favor of the measures of the government."

Deception, however artfully veiled, seldom fails to betray some unsound part. Aristides assures us that Mr. Jefferson "*has actually refused* in any instance to mark a single paragraph, which appeared in the foreign prints, for republication in the National Gazette." On what ground was such an application to Mr. Jefferson made, if he was not considered as the patron of the paper? What printer would make a similar application to the head of any other department? I verily believe none. And I consider the circumstance stated as a confirmation of the relation of patron and client between the SECRETARY of STATE and the editor of the National Gazette.

The refusal, if it happened, is one of those little under-plots, with which the most intriguing man in the United States is at no loss, to keep out of sight the main design of the drama.

CATULLUS.

METELLUS.

October 24, 1792.

The votaries of Mr. Jefferson, whose devotion for their idol kindles at every form in which he deigns to present himself, have deduced matter of panegyric from his opposition to the measures of the government. 'Tis according to them the sublimest pitch of virtue in him, not only to have extra-officially embarrassed plans, originating with his colleagues in the course of their progress, but to have continued his opposition to them, after they had been considered and enacted by the legislature, with such modifications as appeared to them proper, and had

been approved by the chief magistrate. Such conduct, it seems, marks "a firm and virtuous independence of character." If any proof were wanting of that strange inversion of the ideas of decorum, propriety, and order, which characterizes a certain party, this making a theme of encomium of what is truly a demonstration of a caballing, self-sufficient, and refractory temper, would afford it.

In order to show that the epithets have been misapplied, I shall endeavor to state what course a firm and virtuous independence of character, guided by a just and necessary sense of decorum would dictate to a man in the station of Mr. Jefferson.

This has been rendered more particularly requisite by the formal discussion of the point, which appears to be the object of a continuation of a defence of that gentleman, in the American Daily Advertiser of the 10th inst.

The position must be reprobated that a man who had accepted an office in the Executive Department, should be held to throw the weight of his character into the scale, to support a measure which in his conscience *he disapproved, and in his station had opposed*—or, that the members of the administration should form together *a close and secret* combination, into whose measures the profane eye of the public should in no instance pry. But there is a very obvious medium between *aiding* or *countenancing*, and *intriguing* and *machinating* against a measure; between opposing it in the discharge of an official duty, or volunteering an opposition to it in the discharge of no duty; between entering into a close and secret combination with the other members of an administration, and being the active leader of an opposition to its measures.

The true line of propriety appears to me to be the following: A member of the administration, in one department, ought only to *aid* those measures of another which he approves—where he disapproves, if called upon to *act officially*, he ought to manifest his disapprobation, and avow his opposition, but out of an official line he ought not to interfere *as long as he thinks fit to continue a part of the administration.* When the measure in question has become a law of the land, especially with a direct sanction of the

chief magistrate, it is peculiarly his duty to acquiesce. A contrary conduct is inconsistent with his relations as an officer of the government, and with a due respect as such for the decisions of the legislature, and of the head of the Executive Department. The line here delineated, is drawn from obvious and very important considerations. The success of every government—its capacity to combine the exertion of public strength with the preservation of personal right and private security, qualities which define the perfection of a government, must always naturally depend on the energy of the Executive Department. This energy again must materially depend on the union and mutual deference which subsist between the members of that department, and the conformity of their conduct with the views of the executive chief.

Difference of opinion between men engaged in any common pursuit, is a natural appendage of human nature. When only exerted *in the discharge of a duty*, with delicacy and temper, among liberal and sensible men, it can create no animosity; but when it produces officious interferences, dictated by no call of duty—when it volunteers a display of itself in a quarter where there is no reponsibility, to the obstruction and embarrassment of one who is charged with an immediate and direct responsibility, it must necessarily beget ill-humor and discord between the parties. Applied to the members of the executive administration of any government, it must necessarily tend to occasion, more or less, distracted councils, to foster factions in the community, and practically to weaken the government.

Moreover, the heads of the several Executive Departments are justly to be viewed as auxiliaries to the executive chief. Opposition to any measure of his, by either of those heads of departments, except in the shape of frank, firm, and independent advice to himself, is evidently contrary to the relations which subsist between the parties. And it cannot well be controverted that a measure becomes his, so as to involve the duty of acquiescence on the part of the members of his administration, as well by its having received his sanction in the form of a law, as by its having previously received his approbation.

In the theory of our government, the chief magistrate is him-

self responsible for the exercise of every power vested in him by the Constitution. One of the powers intrusted to him, is that of objecting to bills which have passed the two houses of Congress. This supposes the duty of objecting, when he is of opinion that the object of any bill is either *unconstitutional* or *pernicious*. The approbation of a bill implies, that he does not think it either the one or the other; and it makes him responsible to the community for this opinion. The measure becomes his by adoption, nor could he escape a portion of the blame which should finally attach itself to a bad measure, to which he had given his consent.

I am prepared for some declamation against the principles which have been laid down. Some plausible flourishes have already been indulged; and it is to be expected that the public ear will be still further assailed with the commonplace topics that so readily present themselves, and are so dexterously detailed by the traffickers in popular prejudices. But it need never be feared to submit a solid truth to the deliberate and final opinion of an enlightened and sober people.

What! (it will probably he asked,) is a man to sacrifice his conscience and his judgment to an office? Is he to be a dumb spectator of measures which he deems subversive of the rights or interests of his fellow-citizens? Is he to postpone to the frivolous rules of a false complaisance, or the arbitrary dictates of a tyrannical decorum, the higher duty which he owes to the community?

I answer, no! he is to do none of these things. If he cannot coalesce with those with whom he is associated, as far as the rules of official decorum, propriety, and obligation may require, without abandoning what he conceives to be the true interest of the community, let him place himself in a situation in which he will experience no collision of opposite duties. Let him not cling to the honor or emolument of an office, whichever it may be that attracts him, and content himself with defending the injured rights of the people by obscure or indirect means. Let him renounce a situation which is a clog upon his patriotism; tell the people that he could no longer continue in it without forfeit-

ing his duty to them, and that he had quitted it to be more at liberty to afford them his best services.

Such is the course which would be indicated by a firm and virtuous independence of character. Such the course that would be pursued by a man attentive to unite the sense of delicacy with the sense of duty—in earnest about the pernicious tendency of public measures, and more solicitous to act the disinterested friend of the people, than the interested ambitious and intriguing head of a party.

METELLUS.

CATULLUS.

V.

Nov. 24, 1792.

It was my intention to have closed with my last paper the discussion of Mr. Jefferson's conduct, in the particulars which have been suggested, but the singular complexion of the last number* of a series of papers originating in the American Daily Advertiser, obliges me to resume it.

As if bold assertion were capable of imposing any thing for truth, an attempt is made in the papers alluded to, to impress the following opinions:—1st. That the extract which was given of Mr. Jefferson's letter, on the subject of a proposition for the transfer of the French debt, is "false," "deceptive," and "mutilated." These are the epithets in different passages applied to it. 2d. That Mr. Jefferson was the mere vehicle, or, to use the precise terms, "only the vehicle of communication to Congress." 3d. That he "discountenanced" the proposition. 4th. That the "only" proposition which he made to Congress was to borrow the money in Holland to discharge the debt.

* No. IV.

To give color to these assertions, I am called upon to produce the entire paragraph, from which the extract has been made, and it is suggested that the whole was deposited in the quarter from whence the extract is believed to have been taken.

I pledge my veracity that this suggestion is unfounded; as is another—that the information which has been communicated by me is derived from the opportunities of official situation. I affirm unequivocally that I obtained, through different channels, a full knowledge of the transaction in February, 1787—being in no public station whatever—that I then saw the extract, which has been published, and which was at that time taken from the original letter, and has been since preserved in the most authentic form. That I then also received information equally authentic of the general substance of the letter, as relating to the matter in question, and of all other particulars concerning it, which have heretofore been stated, and which have been preserved in a manner, that admits no doubt of their accuracy or genuineness. For this, I again appeal to the letter itself, on the files of the Department of State, where alone, as far as I am informed, its entire contents are deposited, and which I entertain no doubt will confirm not only the truth of the extract which has been given, but the justness of the representation of the contents of the letter in all other respects.

Considering the extract as genuine, which undoubtedly it is, it speaks for itself—and unequivocally falsifies the suggestion that Mr. Jefferson was "*only* the *vehicle*" of communication to Congress. It imports, without the possibility of evasion, *advice* to *accede to* the proposition which was made to the Dutch company, on the dishonorable ground of there being danger, that the public payments *would not be punctual*, and of its being in that case expedient to *transfer the discontents*, which would arise from the want of punctuality, from the court of France to the *breasts of a private company*. It therefore clearly makes him more than the mere vehicle of communication—the patron and adviser of the measure upon the condition which has been stated. It as clearly refutes the astonishing assertion that he "discountenanced" the proposition, whatever subterfuge may be brought to color it.

And it equally destroys the other allegation, that the only proposition which Mr. Jefferson made to Congress, was to borrow the money in Holland to discharge the debt.

It has been admitted, that there was another proposition, in the same letter, of that import; but it is denied, under the appeal which has been made, that it in any manner derogates from the advice contained in the extract. It is understood to have been offered as an alternative, in case the proposition of the Dutch company should not be approved—as another mode which might be adopted to effect the payment to France.

It will be remarked by an attentive reader, that while an artful attempt is made to bring into question the genuineness of the extract, a direct denial of its genuineness is not hazarded. Recourse is had to equivocal implications. It is said to be "false" and "deceptive," not in terms, but "upon a sound construction," —that "the contents of the letter, *even in the extract published*, have been *shamefully misrepresented*,"—not that the extract is itself a forgery, but that "other parts of the letter, absolutely necessary for the full comprehension of it, are kept back." The jargon of asserting, that a *literal* extract from a paper is "false and deceptive *upon a sound construction*," is a proof of the embarrassment of the commentator. Whoever will examine the extract will perceive, that as to the purpose to which it has been applied, it is an *entire* thing. The sentiment reprobated, is there complete, and can be affected by nothing collateral. The inferences resulting from it can only be repelled by establishing that the extract is *in terms* false. This, I believe, will not be pretended.

It is as little true (in the sense in which it is evidently meant to be understood) that the proposition for the transfer of the debt has been imposed upon Mr. Jefferson as his own, as it is that he discountenanced it. It has been acknowledged that the offer was first made by the Dutch company; and has only been maintained that Mr. Jefferson advised its acceptance on principles contrary to good morals; a position which can never be overthrown without introducing a new system of ethics. In this sense, too, and with the disapprobation which belongs to it, was it understood by those to whom the advice was addressed, to the honor of the public councils of the day.

It is suggested that the animadversions upon Mr. Jefferson's conduct in these papers proceed from "private revenge." This supposes some *private* injury, *real* or *imagined*. The assertor must be not a little embarrassed to support the probability of such a cause. It is affirmed that none such exists. Private revenge, therefore, cannot be the stimulus. Let facts speak the true motives.

CATULLUS.

VI.

Decr. 22d, 1792.

If perseverance can supply the want of judgment, Mr. Jefferson has an excellent advocate in the writer of his "vindication." But I mistake, if his last attempt is not found to involve still more deeply the character he wishes to extricate.

To repel the imputation on Mr. Jefferson arising from the advice which he gave to Congress respecting the debt to France, he not only labors to show that, taken in all its circumstances, it is not of the exceptionable complexion under which it has been represented, but endeavors to infuse a belief, that the sense of the extract originally communicated has been altered by the interpolation of certain words, as well as by the suppression of a part of a paragraph, from which the extract is derived.

It will strike the most careless observer as not a little extraordinary, that a person who by undertaking to state the contents of a letter with precise accuracy, and even to detect a minute verbal deviation, must be understood to have access to the original, should, instead of submitting to the public eye a literal transcript of that original, content himself with giving his own paraphrase of it, and should expect that this would be accepted upon the strength of his assurance, that it exhibits the genuine contents of the letter, on the point in dispute contained in one paragraph only—"that the *arrangement of the idea* is the same, and that *in substance* nothing has been added to or taken from

it," thus modestly offering his own *construction* of *substance*, the very thing in question, for the thing itself.

That the extract, as given by me, is correct in every *material expression*, is proved by the statement in the VINDICATION. That it is literally correct, I must continue to believe until something more to be depended upon than *constructive substance* is offered in lieu of it.

The information I possess is drawn from two sources; one a memorandum in the handwriting of a friend, which was given to me as an exact transcript of the words of the letter, and which was copied verbatim, in the second of these papers: the other, a document of unquestionable authenticity, not long since consulted, which states the contents of Mr. Jefferson's letter in the following form:—

Mr. Jefferson suggests that "if there is a danger of the public payments not being punctual, *whether it might not be* better that the discontents which would then arise, should be transferred from a court, of whose good will we have so much need, to the breasts of a private company."

"That the credit of the United States is sound in Holland, and that it would probably not be difficult to borrow in that country the whole sum of money due to the court of France; and to discharge that debt without any deduction, thereby doing what would be grateful to the court, and establishing with them a confidence in our honor."

This statement in the document alluded to serves to confirm the memorandum, in form as well as substance. Speaking in the third person, it represents Mr. Jefferson as *suggesting* "*whether* it *might not* be better, &c.," whence it is natural to infer, that speaking in the first person in the letter, the terms are, "I submit *whether* it *may not* be better, &c."

The form of conveying the idea by way of question is common to both vouchers; and the word "whether," which is also common to both, presupposes the words "I suggest," or "I submit," the last being the most accurate, and in that view the most likely to have been used.

It is observable, also, that the same statement disconnects the

two propositions, and gives them a distinct and independent aspect. The conjunction "but," which is alleged to be in the original, does not appear in that statement.

It is possible, nevertheless, that some immaterial departures from literal precision may have found their way into the transcripts, which are relied upon. But while this concession as a bare possibility is made, it is not intended as an escape from a rigorous responsibility for the essential accuracy of the disclosure. If there be in what has been communicated as a literal extract, any *expression the least material*, tending to the crimination of Mr. Jefferson, which is not to be found in the original, it is admitted to be inexcusable. But not having been possessed of the original, as has been several times stated, any accidental variation of expression, not affecting at all the sense of the quotation, or not affecting it disadvantageously to Mr. Jefferson, cannot be admitted to be of moment in regard either to the merits of the discussion or to the fairness of the procedure. To press such a variance as an objection, is to cavil, and to betray a consciousness of weakness.

Now it happens that the variance which is alleged to exist, if it has any influence upon the meaning of the passage, has one favorable to Mr. Jefferson; taking it for granted that his apologist has given a true account of it. This will be seen by carefully contrasting the phraseology in the two cases.

The extract as stated by me, is in these words, "*If there is a danger of the public payments not being punctual*, I submit whether it may not *be better that the discontents which would then arise, should be transferred from a court, of whose good will we have so much need, to the breasts of a private company.*"

The statement in the vindication represents that Mr. Jefferson "having stated the proposition as above (referring to the proposition for the purchase of the debt), *observes further upon it* in its relation to this country, that if there be a danger our payments may not be punctual, it might be better that the discontents which would then arise, should be transferred from a court, of whose good will we have so much need, to the breasts of a private company."

All the material and exceptionable phrases are the same in the two statements. The only difference between them is, that in the first Mr. Jefferson is made to *submit* in the modest form of a question, "*whether it might not be better*," the identical sentiment or advice, which, in the last, he is made to convey in the affirmative tone of an observation, that "*it might be better.*" The last mode of expression is certainly stronger than the first, and if the sentiment conveyed be, as it undoubtedly is, an improper one, the censure due to it is increased by the greater degree of decision with which it is expressed, as being an indication of a more decided state of mind concerning it. This remark, which might otherwise appear nice and critical, is naturally drawn forth by the attempt to have it understood that the words "*I submit whether*," which are said to have been interpolated, have an influence upon the sense of the clause injurious to Mr. Jefferson.*

The result is, that the alteration of terms said to have been made, if real, must have been casual, because it either does not vary the sense, or varies it favorably to Mr. Jefferson; and consequently, that the charge which has been brought rests upon him in its primitive force, unmitigated by the alleged change of terms.

In like manner, admitting the statement of what is said to follow as a part of the same paragraph, to be truly represented in the vindication, it either corresponds with the view I have heretofore given of the matter, or it implicates Mr. Jefferson in greater reprehensibility than has been yet charged upon him. It either presents an alternative proposition predicated upon the supposition *of a state of things different from that which is the basis of the first*, namely, the danger of a deficiency of means for punctual payment, and in that case does not derogate from the first; or proceeding upon the supposition of the *same state of things*, it contains advice to Congress to avail themselves of the yet sound state of their credit in Holland, treacherously to induce individuals upon the invitation of the government to lend their

* *The words* "might not be better," *are also said to have been interpolated, though all but the* "not" *are in the quotation made by the Vindicator; a specimen of his accuracy.*

money *on the ordinary terms*, for the purpose of making full payment to France, in order to guard her from loss, and preserve her confidence, in direct contemplation of not being able to render the stipulated justice to those individuals. If this was the advice of Mr. Jefferson, it leaves his conduct without even those slight extenuations which have been supposed to afford a semblance of apology. It takes away the feeble pretexts deduced from the offer having originated with the company, and from their gaining a considerable boon in the first purchase.

The last, I acknowledge, is the construction best warranted by the structure of the paragraph as delineated in the vindication. This, as it there stands, would be the most obvious and natural reading. If there be a danger that our payments may not be punctual, it may be better that the discontents which would then arise should be transferred from a court, of whose good will we have so much need, to the breasts of a private company. But still it has occurred to me that we may do what is preferable to accepting the proposition of the Dutch company. We may find occasion to do what would be grateful to the court of France, and establish with them a confidence in our honor. Our credit is good in Holland—may it not be possible then to borrow there the four and twenty millions due to France, and pay them the *whole debt* at once? This, besides transferring the discontents to be expected from the want of punctual payments, from the court of France to the breasts of individuals, would have the further advantage of saving that court from any loss on our account. It is in this sense only, that the first suggestion can be considered as overruled by, or absorbed in the last, and that Mr. Jefferson can be said to have discountenanced the proposition made by the Dutch company. If this be the meaning intended to be contended for, no pains will be taken to dispute it; and the comment will be left to Mr. Jefferson's most partial admirers.

The writer of the vindication continues to insist that Mr. Jefferson was only the vehicle of communication, assigning as reasons for this assertion, that the transaction had taken place between the parties, before any mention was made of it to him, and that in communicating it to Congress, he only made known

to that body the desire both of the company and of the French court, that the *opinion which he gave arose out of the proposition, was in furtherance of the views of the parties*, and that, in fact, *no decision* could be formed on it, either by the Congress, or himself, without a comparison of the parties as creditors of the United States. But these reasons do not prove that Mr. Jefferson was only the vehicle of communication, they prove the contrary; that he was both the vehicle of communication, and the *patron*, though not the *author* of the proposition. The precise difference between being the mere vehicle, and being both the vehicle and the patron of a proposition, consists in this: that in the first case the agent does nothing more than communicate the proposition; in the last, he gives an opinion arising out of it, *in furtherance of the views of the proposers;* which is exactly what is acknowledged to have been done by Mr. Jefferson.

The plea that there could be no *immorality* or *indelicacy*, in espousing a proposition coming from the parties interested, amounts to nothing. The charge is not that advice was given to accede to the proposition, but that advice was given to accede to it, upon a ground which was dishonorable and unjust. It is the condition upon which the acceptance is advised that constitutes the culpability.

In No. 4 of the vindication, the attack upon Mr. Jefferson is said to proceed from *private revenge*. In No. 5, it changes its nature, and becomes an *attack upon principles*—a monarchical plot against the republican character of the community. How long and how often are the people of America to be insulted with this hypocritical rant? When will these political pharisees learn that their countrymen have too much discernment to be the dupes of their hollow and ostentatious pretensions? That the citizens know how to distinguish the men who serve them from those who only flatter them, the men who have substantial claims to their confidence from those who study to conceal the want of qualities, really solid and useful, under the mask of extraordinary and exclusive patriotism and purity?

It is curious to observe the pathetic wailings which have been produced by the animadversions in these papers. It would seem

as if a certain party considered themselves as the sole and rightful censors of the Republic; and every attempt to bestow praise or blame not originating with them, as an usurpation of their prerogative, every stricture on any of their immaculate band as a breach of their privilege. They appear to think themselves authorized to deal out anathemas, without measure or mercy, against all who dare to swerve from their standard of political orthodoxy, which are to be borne without retaliation or murmur. And if any symptom of either shows itself, they are sure to raise the dismal cry of persecution; themselves the first to assail, and the first to complain. But what is not permitted to men who have so clearly established a title, little less than divine, to a monopoly of all the patriotic virtues!

The only answer which is due to the feint of offering to enter into arrangements for ascertaining whether the writer of these papers has, in the instance under consideration, been guilty of misrepresentation—and the breach of an official duty—is to remind the public, that in my first paper I declared myself willing to be known on proper terms to the officer concerned. To this I adhere in the spirit of the original intimation, but I deem a personal disclosure to any subaltern of his improper; nor do I perceive that it is in the present case necessary to an investigation of the facts. The writer of the vindication admits in substance what is alleged; and as to his collateral statements, it has been shown that they imply more blame on the character meant to be exculpated than was originally charged. I forbear any comment on the indecency of naming upon conjecture the person who has been named as the author of these papers, or upon the palpable artifice of making an avowal of them, by that *particular* person, the condition of a disclosure of the name of the writer of the vindication. Indecency and artifice are the proper weapons of such adversaries.

CATULLUS.

A PLAIN HONEST MAN.

For the Gazette of the United States.

1792.

In consequence of the intimation contained in the first number of the vindication of Mr. Jefferson, which originated in the American Daily Advertiser, that, "if any doubt should be suggested of the authenticity of the extracts published, they should be immediately made accessible to others," a person called upon Mr. Dunlap to obtain an inspection of those originals. He replied that they had not been left with him, neither was he possessed of the necessary information where to direct or inquire, but if desired he would, by advertisement, notify the application for a perusal of the letters.

A statement of this answer, as extraordinary as unexpected, was prepared to be inserted in this Gazette, and was communicated to Mr. Dunlap with a view to verify its accuracy. The evening before that destined for its appearance, Mr. D. called upon the person and informed him that the originals were now to be seen, and would be communicated to any person who might incline to see them, observing, at the same time, that it appeared to him that it could not be necessary to publish the statement which has been mentioned, as intended. This was accordingly foreborne.

On the 17th November, Mr. D. was again applied to and again proposed an advertisement, but afterwards hinted, as a preliminary condition of the letters being seen, that the person in whose possession the letters were should be made acquainted with the name of the person who applied for that purpose. Mr. D. afterwards said he would apply again for the letters and have them in his own possession to show them, agreeable to the declaration published—but after this, being again applied to, answered as before, that the applicant must be previously known.

On the a note appeared in Mr. Dunlap's paper of that day, which, after commenting on the disingenuousness of some doubts hinted in one of the papers, under the signature of Catullus, gives "notice that any gentleman of *known honor and delicacy* who shall be *named* to the editor of the American Daily Advertiser, shall have an opportunity of examining not only the passages extracted, but the entire contents of the original letter."

What gentleman of real *delicacy* would be willing to present himself under the professed character of a "gentleman of known *honor* and *delicacy*," at the hazard of being affronted by a rejection to obtain the proffered access? Is not an offer so clogged a *felo de se?* What is the natural inference? If I am not, Mr. Printer, a "gentleman of known honor and delicacy," I hope you will not think the worse of me for being only

A PLAIN HONEST MAN.

OBSERVER.

1793.

Among the observations which have appeared as containing the debates in congress, respecting the official conduct of the Secretary of the Treasury, Mr. Findley is represented as having made the following assertions: "That the Secretary of the Treasury had *acknowledged* that he had not *applied* the money borrowed in Europe *agreeably to the legal appropriations of the President.* That he had *acknowledged* his having drawn to this country, and applied in Europe to *uses for which other moneys were appropriated, three millions of dollars.*—That he had *acknowledged* his having drawn from Europe more money than the law *authorized him to do.*—That he was influenced to do so by motives not contemplated by the law, and had either applied it, or drawn it from Europe, with the design of applying it to uses not authorized, and

that he had *broken* in upon the fund appropriated for the discharge of the French debt."

Before I read this speech I had carefully perused the different communications made by the Secretary of the Treasury to the House of Representatives, and after reading it I was led to revise them. The result has been that I have found all these assertions attributed to Mr. Findley either direct untruths or palpable misrepresentations, and I challenge Mr. Findley or any of his friends to produce the passages which will warrant them. The truth is, that Mr. Findley has palmed upon the Secretary his own reasonings and inferences for points conceded by him. The *commentary* has been substituted for the *text.*

OBSERVER.

PACIFICUS.

NO. I.

June 29th, 1793.

As attempts are making, very dangerous to the peace, and, it is to be feared, not very friendly to the Constitution of the United States, it becomes the duty of those who wish well to both, to endeavor to prevent their success.

The objections which have been raised against the proclamation of neutrality, lately issued by the president, have been urged in a spirit of acrimony and invective, which demonstrates that more was in view than merely a free discussion of an important public measure. They exhibit evident indications of a design to weaken the confidence of the people in the author of the measure, in order to remove or lessen a powerful obstacle to the success of an opposition to the government, which, however it may change its form according to circumstances, seems still to be persisted in with unremitting industry.

This reflection adds to the motives connected with the mea-

sure itself, to recommend endeavors, by proper explanations, to place it in a just light. Such explanations, at least, cannot but be satisfactory to those who may not themselves have leisure or opportunity for pursuing an investigation of the subject, and who may wish to perceive that the policy of the government is not inconsistent with its obligations or its honor.

The objections in question fall under four heads:

1. That the proclamation was without authority.

2. That it was contrary to our treaties with France.

3. That it was contrary to the gratitude which is due from this to that country, for the succors afforded to us in our own revolution.

4. That it was out of time and unnecessary.

In order to judge of the solidity of the first of these objections, it is necessary to examine what is the nature and design of a proclamation of neutrality.

It is to *make known* to the powers at war, and to the citizens of the country whose government does the act, that such country is in the condition of a nation at peace with the belligerent parties, and under no obligations of treaty to become an *associate in the war* with either, and that this being its situation, its intention is to observe a corresponding conduct, by performing towards each the duties of neutrality; to warn all persons within the jurisdiction of that country, to abstain from acts that shall contravene those duties, under the penalties which the laws of the land, of which the *jus gentium* is part, will inflict.

This, and no more, is conceived to be the true import of a proclamation of neutrality.

It does not imply that the nation which makes the declaration will forbear to perform to either of the warring powers any stipulations in treaties which can be executed, without becoming a *party* in the war. It therefore does not imply in our case that the United States will not make those distinctions, between the present belligerent powers, which are stipulated in the 7th and 22d articles of our treaty with France; because they are not incompatible with the state of neutrality; and will in no shape render the United States an *associate* or *party* in the war. This

must be evident, when it is considered that even to furnish *determinate* succors of ships or troops to a power at war, in consequence of *antecedent treaties having no particular reference to the existing quarrel*, is not inconsistent with neutrality: a position equally well established by the doctrines of writers and the practice of nations.*

But no special aids, succors, or favors, having relation to war, not positively and precisely stipulated by some treaty of the above description, can be afforded to either party, without a breach of neutrality.

In stating that the proclamation of neutrality does not imply the non-performance of any stipulations of treaties, which are not of a nature to make the nation an associate in the war, it is conceded that an execution of the clause of guaranty, contained in the eleventh article of our treaty of alliance with France, would be contrary to the sense and spirit of the proclamation; because it would engage us with our whole force as an *auxiliary* in the war; it would be much more than the case of a definite succor, previously ascertained.

It follows, that the proclamation is virtually a manifestation of the sense of the government, that the United States are, *under the circumstances of the case, not bound* to execute the clause of guaranty.

If this be a just view of the force and import of the proclamation, it will remain to see, whether the president, in issuing it, acted within his proper sphere, or stepped beyond the bounds of his constitutional authority and duty.

It will not be disputed, that the management of the affairs of this country with foreign nations is confided to the government of the United States.

It can as little be disputed, that a proclamation of neutrality, when a nation is at liberty to decline or avoid a war in which other nations are engaged, and means to do so, is a *usual* and a *proper* measure. *Its main object is to prevent the nation's being responsible for acts done by its citizens, without the privity or conni-*

* See Vatel, Book III., Chap. 6, Sec. 101.

vance of the government, in contravention of the principles of neutrality;* an object of the greatest moment to a country whose true interest lies in the preservation of peace.

The inquiry then is, what department of our government is the proper one to make a declaration of neutrality, when the engagements of the nation permit, and its interests require that it should be done?

A correct mind will discern at once, that it can belong neither to the legislative nor judicial department, of course must belong to the executive.

The legislative department is not the *organ* of intercourse between the United States and foreign nations. It is charged neither with *making* nor *interpreting* treaties. It is therefore not naturally that member of the government, which is to pronounce the existing condition of the nation, with regard to foreign powers, or to admonish the citizens of their obligations and duties in consequence; still less is it charged with enforcing the observance of those obligations and duties.

It is equally obvious, that the act in question is foreign to the judiciary department. The province of that department is to decide litigations in particular cases. It is indeed charged with the interpretation of treatics, but it exercises this function only where contending parties bring before it a specific controversy. It has no concern with pronouncing upon the external political relations of treaties between government and government. This position is too plain to need being insisted upon.

It must then of necessity belong to the executive department to exercise the function in question, when a proper case for it occurs.

It appears to be connected with that department in various capacities:—As the *organ* of intercourse between the nation and foreign nations; as the *interpreter* of the national treaties, in those cases in which the judiciary is not competent, that is, between government and government; as the *power* which is charged with the execution of the laws, of which treaties form a part; as

* See Vatel, Book III., Chap. 7, Sec. 113.

that which is charged with the command and disposition of the public force.

This view of the subject is so natural and obvious, so analogous to general theory and practice, that no doubt can be entertained of its justness, unless to be deduced from particular provisions of the Constitution of the United States.

Let us see, then, if cause for such doubt is to be found there.

The second article of the Constitution of the United States, section first, establishes this general proposition, that "the EXECUTIVE POWER shall be vested in a President of the United States of America."

The same article, in a succeeding section, proceeds to delineate particular cases of executive power. It declares, among other things, that the president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; that he shall have power, by and with the advice and consent of the senate, to make treaties; that it shall be his duty to receive ambassadors and other public ministers, *and to take care that the laws be faithfully executed.*

It would not consist with the rules of sound construction, to consider this enumeration of particular authorities as derogating from the more comprehensive grant in the general clause, further than as it may be coupled with express restrictions or limitations; as in regard to the co-operation of the senate in the appointment of officers, and the making of treaties; which are plainly qualifications of the general executive powers of appointing officers and making treaties. The difficulty of a complete enumeration of all the cases of executive authority, would naturally dictate the use of general terms, and would render it improbable that a specification of certain particulars was designed as a substitute for those terms, when antecedently used. The different mode of expression employed in the constitution, in regard to the two powers, the legislative and the executive, serves to confirm this inference. In the article which gives the legislative powers of the government, the expressions are, "All legislative powers herein granted shall be vested in a congress of the United

States." In that which grants the executive power, the expressions are, "*The executive power* shall be vested in a President of the United States."

The enumeration ought therefore to be considered, as intended merely to specify the principal articles implied in the definition of executive power; leaving the rest to flow from the general grant of that power, interpreted in conformity with other parts of the Constitution, and with the principles of free government.

The general doctrine of our Constitution then is, that the *executive power* of the nation is vested in the President; subject only to the *exceptions* and *qualifications*, which are expressed in the instrument.

Two of these have been already noticed; the participation of the senate in the appointment of officers, and in the making of treaties. A third remains to be mentioned; the right of the legislature "to declare war, and grant letters of marque and reprisal."

With these exceptions, the *executive power* of the United States is completely lodged in the President. This mode of construing the Constitution has indeed been recognized by Congress in formal acts, upon full consideration and debate; of which the power of removal from office is an important instance. It will follow, that if a proclamation of neutrality is merely an executive act, as it is believed, has been shown, the step which has been taken by the President is liable to no just exception on the score of authority.

It may be said, that this inference would be just, if the power of declaring war had not been vested in the legislature; but that this power naturally includes the right of judging, whether the nation is or is not under obligations to make war.

The answer is, that however true this position may be, it will not follow, that the executive is in any case excluded from a similar right of judgment, in the execution of its own functions.

If on the one hand, the legislature have a right to declare war, it is on the other, the duty of the executive to preserve peace, till the declaration is made; and in fulfilling this duty, it must necessarily possess a right of judging what is the nature of the

obligations which the treaties of the country impose on the government; and when it has concluded that there is nothing in them inconsistent with neutrality, it becomes both its province and its duty to enforce the laws incident to that state of the nation. The executive is charged with the execution of all laws, the law of nations, as well as the municipal law, by which the former are recognized and adopted. It is consequently bound, by executing faithfully the laws of neutrality, when the country is in a neutral position, to avoid giving cause of war to foreign powers.

This is the direct end of the proclamation of neutrality. It declares to the United States their situation with regard to the contending parties, and makes known to the community, that the laws incident to that state will be enforced. In doing this, it conforms to an established usage of nations, the operation of which, as before remarked, is to obviate a responsibility on the part of the whole society, for secret and unknown violations of the rights of any of the warring powers by its citizens.

Those who object to the proclamation will readily admit, that it is the right and duty of the executive to interpret those articles of our treaties which give to France particular privileges, in order to the enforcement of them: but the necessary consequence of this is, that the executive must judge what are their proper limits; what rights are given to other nations, by our contracts with them; what rights the law of nature and nations gives, and our treaties permit, in respect to those countries with which we have none; in fine, what are the reciprocal rights and obligations of the United States, and of all and each of the powers at war.

The right of the executive to receive ambassadors and other public ministers, may serve to illustrate the relative duties of the executive and legislative departments. This right includes that of judging, in the case of a revolution of government in a foreign country, whether the new rulers are competent organs of the national will, and ought to be recognised, or not; which, where a treaty antecedently exists between the United States and such nation, involves the power of continuing or suspending its operation. For until the new government is *acknowledged*, the

treaties between the nations, so far at least as regards *public* rights, are of course suspended.

This power of determining virtually upon the operation of national treaties, as a consequence of the power to receive public ministers, is an important instance of the right of the executive, to decide upon the obligations of the country with regard to foreign nations. To apply it to the case of France, if there had been a treaty of alliance, *offensive* and defensive, between the United States and that country, the unqualified acknowledgment of the new government would have put the United States in a condition to become an associate in the war with France, and would have laid the legislature under an obligation, if required, and there was otherwise no valid excuse, of exercising its power of declaring war.

This serves as an example of the right of the executive, in certain cases, to determine the condition of the nation, though it may, in its consequences, affect the exercise of the power of the legislature to declare war. Nevertheless, the executive cannot thereby control the exercise of that power. The legislature is still free to perform its duties, according to its own sense of them; though the executive, in the exercise of its constitutional powers, may establish an antecedent state of things, which ought to weigh in the legislative decisions.

The division of the executive power in the Constitution, creates a *concurrent* authority in the cases to which it relates.

Hence, in the instance stated, treaties can only be made by the president and senate jointly; but their activity may be continued or suspended by the President alone.

No objection has been made to the President's having acknowledged the republic of France, by the reception of its minister, without having consulted the senate; though that body is connected with him in the making of treaties, and though the consequence of his act of reception is, to give operation to those heretofore made with that country. But he is censured for having declared the United States to be in a state of peace and neutrality, with regard to the powers at war; because the right of *changing* that state, and *declaring war,* belongs to the legislature.

It deserves to be remarked, that as the participation of the senate in the making of treaties, and the power of the legislature to declare war, are exceptions out of the general "executive power" vested in the President, they are to be construed strictly, and ought to be extended no further than is essential to their execution.

While, therefore, the legislature can alone declare war, can alone actually transfer the nation from a state of peace to a state of hostility, it belongs to the "executive power" to do whatever else the law of nations, co-operating with the treaties of the country, enjoin in the intercourse of the United States with foreign powers.

In this distribution of authority, the wisdom of our Constitution is manifested. It is the province and duty of the executive to preserve to the nation the blessings of peace. The legislature alone can interrupt them by placing the nation in a state of war.

But though it has been thought advisable to vindicate the authority of the executive on this broad and comprehensive ground, it was not absolutely necessary to do so. That clause of the Constitution which makes it his duty to "take care that the laws be faithfully executed," might alone have been relied upon, and this simple process of argument pursued.

The President is the Constitutional EXECUTOR of the laws. Our treaties, and the laws of nations, form a part of the law of the land. He, who is to execute the laws, must first judge for himself of their meaning. In order to the observance of that conduct which the laws of nations, combined with our treaties, prescribed to this country, in reference to the present war in Europe, it was necessary for the President to judge for himself, whether there was anything in our treaties, incompatible with an adherence to neutrality. Having decided that there was not, he had a right, and if in his opinion the interest of the nation required it, it was his duty as executor of the laws, to proclaim the neutrality of the nation, to exhort all persons to observe it, and to warn them of the penalties which would attend its non-observance.

The proclamation has been represented as enacting some new law. This is a view of it entirely erroneous. It only proclaims

a *fact*, with regard to the *existing state* of the nation; informs the citizens of what the laws previously established require of them in that state, and notifies them that these laws will be put in execution against the infractors of them.

NO. II.

July 3d, 1793.

The second and principal objection to the proclamation, namely, that it is inconsistent with the treaties between the United States and France, will now be examined.

It has been already shown, that it does not militate against the performance of any of the stipulations in those treaties, which would not make us an associate or party in the war, and especially that it does not interfere with the privileges secured to France by the seventeenth and twenty-second articles of the treaty of commerce; which, except the clause of guaranty, constitute the most material discriminations to be found in our treaties in favor of that country.

Official documents have likewise appeared in the public papers, which serve as a comment upon the sense of the proclamation in this particular, proving that it was not deemed by the executive, incompatible with the performance of the stipulations in those articles, and that in practice they are intended to be observed.

It has, however, been admitted, that the declaration of neutrality excludes the idea of an execution of the clause of guaranty.

It becomes necessary therefore to examine, whether the United States would have a valid justification for not complying with it, in case of their being called upon for that purpose by France.

Without knowing how far the reasons which have occurred to me, may have influenced the President, there appear to me to exist very good and substantial grounds for a refusal.

The alliance between the United States and France, is of the defensive kind. In the caption, it is denominated a "treaty of alliance eventual and defensive." In the body (article the second) it is called a defensive alliance. The words of that article are as follows: "The essential and direct end of the present defensive alliance is to maintain effectually the liberty, sovereignty, and independence, absolute and unlimited, of the United States, as well in matters of government, as of commerce."

The leading character then of our alliance with France being defensive, it will follow that the meaning, obligation, and force of every stipulation in the treaty, must be tested by the principles of such an alliance; unless in any instance terms have been used which clearly and unequivocally denoted a different intent.

The principal question consequently is: what is the nature and effect of a defensive alliance? When does the *casus fœderis* take place in relation to it?

Reason, the concurring opinions of writers, and the practice of nations, will all answer: "When either of the allies is *attacked*," when "war is *made upon him*, not when he *makes war upon another:* in other words, the stipulated assistance is to be given "when our ally is engaged in a defensive, not when he is engaged in an offensive war." This obligation to assist only in a defensive war, constitutes the essential difference between an alliance which is merely defensive, and one which is both offensive and defensive. In the latter case, there is an obligation to co-operate as well when the war, on the part of our ally, is of the latter, as when it is of the former description. To affirm, therefore, that the United States are bound to assist France in the war in which she is at present engaged, will be to convert our treaty with her into an alliance offensive and defensive, contrary to the express and reiterated declarations of the instrument itself.

This assertion implies, that the war in question is an offensive war on the part of France.

And so it undoubtedly is, with regard to all the powers with whom she was at war, at the time of issuing the proclamation.

No position is better established, than that the nation which first declares, or actually begins a war, whatever may have been

the causes leading to it, is that which makes an offensive war. Nor is there any doubt, that France first declared and began the war, against Austria, Prussia, Savoy, Holland, England, and Spain.

Upon this point, there is apt to be some incorrectness of ideas. Those who have not examined subjects of such a nature, are led to imagine that the party which commits the first injury, or gives the first provocation, is on the offensive side, though hostilities are actually begun by the other party.

But the cause or the occasion of the war, and the war itself, are things entirely distinct. It is the commencement of the war itself which decides the question, whether it be offensive or defensive. All writers on the laws of nations agree in this doctrine; but it is most accurately laid down in the following extracts from Burlemaqui.*

"Neither are we to believe (says he) that he who first injures another, begins by that an offensive war, and that the other who demands the satisfaction for the injury received, is always on the defensive. There are a great many unjust acts, which may kindle a war, and which, however, are not the war itself; as the ill treatment of a prince's ambassadors, the plundering of his subjects, &c."

If, therefore, we take up arms to revenge such an unjust act, we commence an offensive, but a just war; and the prince who has done the injury, and will not give satisfaction, makes a defensive, but an unjust war.

We must therefore affirm, in general, that the first who takes up arms, whether justly or unjustly, commences an offensive war; and he who opposes him, whether with or without reason, begins a defensive war.

France then being on the offensive in the present war, and our alliance with her being defensive only, it follows, that the *casus fœderis*, or condition of our guaranty, cannot take place; and that the United States are free to refuse a performance of that guaranty if demanded.

* Vol. II., Book IV., Chap. III., Sec. 4, 5.

Those who are disposed to justify indiscriminately every thing in the conduct of France, may reply that though the war, in point of form, may be offensive on her part, yet in point of principle, it is defensive; was in each instance a mere anticipation of attacks meditated against her, and was justified by previous aggressions of the opposite parties.

It is believed that it would be a sufficient answer to this observation to say, that in determining the legal and positive obligations of the United States, the only point of inquiry is, whether the war was in fact begun by France, or by her enemies; that all beyond this is too vague, too liable to dispute, too much matter of opinion to be a proper criterion of national conduct; that when a war breaks out between two nations, all others, in regard to the positive rights of the parties, and their positive duties towards them, are bound to consider it as equally just on both sides; that consequently in a defensive alliance, when war is made upon one of the allies, it is the duty of the other to fulfil the conditions stipulated on its part, without inquiry, whether the war is rightfully begun or not; as on the other hand, when war is commenced by one of the allies, the other is exempted from the obligation to assist, however just the commencement of it may have been.

This doctrine is founded upon the utility of clear and certain rules for determining the reciprocal duties of nations, in order that as little as possible may be left to opinion, and to the subterfuges of an over-refining or unfaithful casuistry.

Some writers indeed of high authority affirm, that it is a tacit condition of every alliance, that one ally is not bound to assist the other in a war manifestly unjust. But this is questioned by other respectable authorities on the ground which has been stated. And though the manifest injustice of the war has been affirmed by some, to be a good cause for not executing the formal obligations of a treaty, I have nowhere seen it maintained, that the abstract justice of a war will of itself oblige a nation to do what its formal obligations do not enjoin: if this however were not the true doctrine, an impartial examination would prove, that with respect to some of the powers, France is not blameless in

the circumstances which preceded and led to the war; that if she received, she also gave causes of offence, and that the justice of the war, on her side, is in those cases not a little problematical.

There are prudential reasons, which dissuade from going largely into this examination, unless it shall be rendered necessary by the future turn of the discussion.

It will be sufficient here to notice cursorily the following facts:

France committed an aggression upon Holland, in declaring the navigation of the Scheldt free, and acting upon that declaration; contrary to treaties in which she had explicitly acknowledged, and even guarantied, the exclusive right of Holland to the use of that river; and contrary also to the doctrines of the best writers, and the established usages of nations in such cases.

She gave a general and very serious cause of alarm and umbrage by the decree of the 19th of November, 1792, whereby the convention, in the name of the French nation, declare, that they will grant fraternity and assistance to *every people* who wish to recover their liberty; and charge the executive power to send the necessary orders to the generals to give assistance to such people, and to defend those citizens who have been, or who may be vexed for the cause of liberty; which decree was ordered to be printed in all languages.

This very extraordinary decree amounted exactly to what France herself had most complained of; an interference by one nation in the internal government of another.

When a nation has actually come to a resolution to throw off a yoke, under which it may have groaned, and to assert its liberties, it is justifiable and meritorious in another, to afford assistance to the one which has been oppressed, and is in the act of liberating itself; but it is not warrantable for any nation beforehand, to hold out a general invitation to insurrection and revolution, by promising to assist every people who may wish to recover their liberty, and to defend those citizens of every country, who have been, or who may be vexed for the cause of liberty; still less to commit to the generals of its armies the discretionary power of judging, when the citizens of a foreign

country have been vexed for the cause of liberty by their own government.

For Vatel justly observes, as a consequence of the liberty and independence of nations, "that it does not belong to any foreign power, to take cognizance of the administration of a sovereign of another country, to set himself up as a judge of his conduct, or to oblige him to alter it."

It had a natural tendency to disturb the tranquillity of nations, and to excite everywhere fermentation and revolt: it therefore justified neutral powers, who were in a situation to be affected by it, in taking measures to repress the spirit by which it had been dictated.

But the principle of that decree received a more particular application to Great Britain, by some subsequent circumstances.

Among the proofs of this are two answers, which were given by the President of the National Convention, at a public sitting on the 28th of November, to two different adresses; one presented by a deputation from "the Society for Constitutional information in London," the other by a deputation of English and Irish citizens at Paris.

The following are extracts from these answers:

"The shades of Penn, of Hampden, and of Sidney, hover over your heads; and the moment, without doubt, approaches, in which the French will bring congratulations to the national Convention of Great Britain."

"Nature and principles draw towards us England, Scotland, and Ireland. Let the cries of friendship resound through the TWO REPUBLICS"—"Principles are waging war against tyranny, which will fall under the blows of philosophy. ROYALTY in Europe is either destroyed or on the point of perishing, on the ruins of feudality: and the declaration of rights placed by the side of thrones, is a devouring fire which will consume them—Worthy Republicans, &c."

Declarations of this sort cannot but be viewed as a direct application of the principle of the decree to Great Britain; and as an open patronage of a revolution in that country; a conduct which, proceeding from the head of the body that governed

France, in the presence and on behalf of that body, was unquestionably an offence and injury to the nation to which it related.

The decree of the 15th of November, is a further cause of offence to all the governments of Europe. By that decree, "the French nation declares, that it will treat as enemies the people, who, refusing or renouncing liberty and equality, are desirous of preserving their prince and privileged castes, or of entering into an accommodation with them, &c." This decree was little short of a declaration of war against all nations having princes and privileged classes.

The formal and definitive annexation to France of the territories over which her arms had temporarily prevailed, is another violation of just and moderate principles, into which the convention was betrayed by an intemperate zeal, if not by a culpable ambition; and of a nature to justify the jealousy and ill-will of every neighboring state.

The laws of nations give to a power at war nothing more than a usufructuary or possessory right to the territories which it acquires; suspending the absolute property and dominion, till a treaty of peace, or something equivalent, shall have ceded or relinquished the conquered territory to the conqueror. This rule is one of primary importance to the tranquillity and security of nations—facilitating an adjustment of their quarrels, and the preservation of ancient limits.

But France, by incorporating with herself in several instances the territories she had acquired, violated that rule, and multiplied infinitely the obstacles to peace and accommodation. The doctrine that a nation cannot consent to its own dismemberment, but in a case of extreme necessity, immediately attached itself to all the conquered territories; while the progressive augmentation of the dominions of the most powerful empire in Europe, on a principle not of temporary possession, but of permanent acquisition, threatened the independence of all other countries, and gave to neighboring neutral powers the justest cause of discontent and apprehension. It is a principle well agreed, and founded on substantial reasons, that whenever a particular state adopts

maxims of conduct contrary to those generally established among nations, calculated to interrupt their tranquillity and to expose their safety, they may justifiably make common cause to resist and control the state which manifests a disposition so suspicious and exceptionable.

Whatever partiality may be entertained for the general object of the French revolution, it is impossible for any well-informed or sober-minded man, not to condemn the proceedings which have been stated, as repugnant to the rights of nations, to the true principles of liberty, to the freedom of opinion of mankind; or not to acknowledge as a consequence of this, that the justice of the war on the part of France, with regard to some of the powers with which she is engaged, is from those causes questionable enough to free the United States from all embarrassment on that score, if indeed it be at all incumbent upon them to go into the inquiry.

The policy of a defensive alliance is so essentially distinct from that of an offensive one, that it is every way important not to confound their effects. The first kind has in view the prudent object of mutual defence, when either of the allies is involuntarily forced into a war by the attack of some third power. The latter subjects the peace of each ally to the will of the other, and obliges each to partake in the other's wars of policy and interest, as well as in those of safety and defence. To preserve their boundaries distinct, it is necessary that each kind should be governed by plain and obvious rules.

This would not be the case, if instead of taking as a guide the simple fact of who began the war, it was necessary to travel into metaphysical niceties about the justice or injustice of the causes which led to it:

Inasmuch also as the not furnishing a stipulated succor, when it is due, is itself a cause of war, it is very requisite that there should be some palpable criterion for ascertaining when it is due. This criterion, as before observed, in a defensive alliance, is the commencement or not, of the war by our ally, as a mere matter of fact.

Other topics serving to illustrate the position that the United

States are not bound to execute the clause of guaranty, are reserved for another paper.

NO. III.

July 6th, 1793.

France, at the time of issuing the proclamation, was engaged in war with a considerable part of Europe, and likely to be embroiled with almost all the rest, without a single ally in that quarter of the globe.

In such a situation, it is evident, that however she may be able to defend herself at home, of which her factions and internal agitations furnish the only serious doubt, she cannot make external efforts in any degree proportioned to those which can be made against her.

This state of things alone discharges the United States from an obligation to embark in her quarrel.

It is known, that we are wholly destitute of naval force. France, with all the great maritime powers united against her, is unable to supply this deficiency. She cannot afford us that species of co-operation which is necessary to render our efforts useful to her, and to prevent our experiencing the destruction of our trade, and the most calamitous inconveniences in other respects.

Our guaranty does not look to France herself. It does not relate to her immediate defence, but to the defence and preservation of her American colonies; objects of which she might be deprived, and yet remain a great, a powerful, and a happy nation.

In the actual situation of this country, and in relation to a matter of only secondary importance to France, it may fairly be maintained, that an ability in her to supply, in a competent degree, our deficiency of naval force, is a condition of our obligation to perform the guaranty on our part.

Had the United States a powerful marine, or could they com-

mand one in time, this reasoning would not be solid; but circumstanced as they are, it is presumed to be well founded.

There would be no proportion between the mischiefs and perils to which the United States would expose themselves, by embarking in the war, and the benefit which the nature of their stipulation aims at securing to France, or that which it would be in their power actually to render her by becoming a party.

This disproportion would be a valid reason for not executing the guaranty. All contracts are to receive a reasonable construction. Self-preservation is the first duty of a nation; and though in the performance of stipulations relating to war, good faith requires that its ordinary hazards should be fairly met, because they are directly contemplated by such stipulations, yet it does not require that extraordinary and extreme hazards should be run; especially where the object to be gained or secured is only a partial or particular interest of the ally, for whom they are to be encountered.

As in the present instance, good faith does not require that the United States should put in jeopardy their essential interests, perhaps their very existence, in one of the most unequal contests in which a nation could be engaged, to secure to France—what? Her West India islands and other less important possessions in America. For it is always to be remembered, that the stipulations of the United States do, in no event, reach beyond this point. If they were, upon the strength of their guaranty, to engage in the war, and could make any arrangement with the belligerent powers, for securing to France those islands and those possessions, they would be at perfect liberty instantly to withdraw. They would not be bound to prosecute the war one moment longer.

They are under no obligation in any event, as far as the faith of treaties is concerned, to assist France in defence of her liberty; a topic on which so much has been said, so very little to the purpose, as it regards the present question.

The contest in which the United States would plunge themselves, were they to take part with France, would possibly be still more unequal than that in which France herself is engaged. With the possessions of Great Britain and Spain on both flanks,

the numerous Indian tribes under the influence and direction of those powers, along our whole interior frontier, with a long extended sea-coast, with no maritime force of our own, and with the maritime force of all Europe against us, with no fortifications whatever, and with a population not exceeding four millions; it is impossible to imagine a more unequal contest, than that in which we should be involved in the case supposed. From such a contest we are dissuaded by the most cogent motives of self-preservation, no less than of interest.

We may learn from Vatel, one of the best writers on the laws of nations, that "if a state which has promised succors, finds itself unable to furnish them, its very inability is its exemption; and if the furnishing the succors would expose it to an evident danger, this also is a lawful dispensation. The case would render the treaty pernicious to the state, and therefore not obligatory. But this applies to an imminent danger threatening the safety of the state: the case of such a danger is tacitly and necessarily reserved in every treaty."*

If too, as no sensible and candid man will deny, the extent of the present combination against France, is in a degree to be ascribed to imprudences on her part, the exemption to the United States is still more manifest and complete. No country is bound to partake in hazards of the most critical kind, which may have been produced or promoted by the indiscretion and intemperance of another. This is an obvious dictate of reason, with which the common sense and common practice of mankind coincide.

To the foregoing considerations, it may perhaps be added with no small degree of force, that military stipulations in national treaties, contemplate only the ordinary case of foreign war, and are irrelative to the contests which grow out of revolutions of government; unless where they have express reference to a revolution begun, or where there is a guaranty of the existing constitution of a nation, or where there is a personal alliance for the defence of a prince and his family.†

* See Book III., Chap. VI., Sec. 92. † Puffendorf, Book VIII., Chap. IX., Sec. 9.

The revolution in France is the primitive source of the war in which she is engaged. The restoration of the monarchy is the avowed object of some of her enemies, and the implied one of all. That question then is essentially involved in the principle of the war; a question certainly never in the contemplation of the government with which our treaty was made, and it may thence be fairly inferred, never intended to be embraced by it.

The inference is, that the United States fulfilled the utmost that could be claimed by the nation of France, when they so far respected its decision as to recognize the newly constituted authorities; giving operation to the treaty of alliance for future occasions, but considering the present war as a tacit exception. Perhaps too, this exception is, in other respects, due to the circumstances under which the engagements between the two countries were contracted. It is impossible, prejudice apart, not to perceive a delicate embarrassment between the theory and fact of our political relations to France.

On these grounds, also, as well as that of the present war being offensive on the side of France, the United States have valid and honorable pleas to offer against the execution of the guaranty, if it should be claimed by France. And the President was in every view fully justified in pronouncing, that the duty and interest of the United States dictated a neutrality in the war.

NO. IV.

July 10th, 1793.

A third objection to the proclamation is, that it is inconsistent with the gratitude due to France, for the services rendered to us in our revolution.

Those who make this objection disavow, at the same time, all intention to maintain the position, that the United States ought to take part in the war. They profess to be friends to our remaining at peace. What then do they mean by the objection?

If it be no breach of gratitude to refrain from joining France in the war, how can it be a breach of gratitude to declare, that such is our disposition and intention?

The two positions are at variance with each other; and the true inference is, either that those who make the objection really wish to engage this country in the war, or that they seek a pretext for censuring the conduct of the Chief Magistrate, for some purpose very different from the public good.

They endeavor in vain to elude this inference by saying, that the proclamation places France upon an equal footing with her enemies; while our treaties require distinctions in her favor, and our relative situation would dictate kind offices to her, which ought not be granted to her adversaries.

They are not ignorant, that the proclamation is reconcilable with both those objects, as far as they have any foundation in truth or propriety.

It has been shown that the promise of "a friendly and impartial conduct" towards all the belligerent powers, is not incompatible with the performance of any stipulations in our treaties, which would not include our becoming an associate in the war; and it has been observed, that the conduct of the executive, in regard to the seventeenth and twenty-second articles of the treaty of commerce, is an unequivocal comment upon the terms. They were, indeed, naturally to be understood, with the exception of those matters of positive compact, which would not amount to taking part in the war; for a nation then observes a friendly and impartial conduct towards two contending powers, when it only performs to one of them what it is obliged to do by stipulations in antecedent treaties, which do not constitute a participation in the war.

Neither do those expressions imply, that the United States will not exercise their discretion in doing kind offices to some of the parties, without extending them to the others, so long as they have no relation to war; for kind offices of that description may, consistently with neutrality, be shown to one party and refused to another.

If the objectors mean, that the United States ought to favor

France, in things relating to war, and where they are not bound to do it by treaty; they must in this case also abandon their pretension of being friends to peace. For such a conduct would be a violation of neutrality, which could not fail to produce war.

It follows then, that the proclamation is reconcilable with all that those who censure it contend for; taking them upon their own ground, that nothing is to be done incompatible with the preservation of peace.

But though this would be a sufficient answer to the objection under consideration; yet it may not be without use, to indulge some reflections on this very favorite topic of gratitude to France; since it is at this shrine that we are continually invited to sacrifice the true interests of the country; as if "all for love, and the world well lost," were a fundamental maxim in politics.

Faith and justice, between nations, are virtues of a nature the most necessary and sacred. They cannot be too strongly inculcated, nor too highly respected. Their obligations are absolute, their utility unquestionable; they relate to objects which, with probity and sincerity, generally admit of being brought within clear and intelligible rules.

But the same cannot be said of gratitude. It is not very often, that between nations, it can be pronounced with certainty, that there exists a solid foundation for the sentiment; and how far it can justifiably be permitted to operate, is always a question of still greater difficulty.

The basis of gratitude is a benefit received or intended, which there was no right to claim, originating in a regard to the interest or advantage of the party on whom the benefit is, or is meant to be, conferred. If a service is rendered from views relative to the immediate interest of the party who performs it, and is productive of reciprocal advantages, there seems scarcely in such a case, to be an adequate basis for a sentiment like that of gratitude.

The effect at least would be wholly disproportioned to the cause, if such a service ought to beget more than a disposition to render in turn a correspondent good office, founded on mutual interest and reciprocal advantage. But gratitude would require much more than this; it would exact to a certain extent, even a

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sacrifice of the interest of the party obliged to the service or benefit of the one by whom the obligation had been conferred.

Between individuals, occasion is not unfrequently given for the exercise of gratitude. Instances of conferring benefits from kind and benevolent dispositions or feelings towards the person benefited, without any other interest on the part of the person who renders the service, than the pleasure of doing a good action, occur every day among individuals. But among nations they perhaps never occur. [It may be affirmed as a general principle, that the predominant motive of good offices from one nation to another, is the interest or advantage of the nation which performs them.]

Indeed, the rule of morality in this respect is not precisely the same between nations, as between individuals. The duty of making its own welfare the guide of its actions, is much stronger upon the former than upon the latter; in proportion to the greater magnitude and importance of national, compared with individual happiness, and to the greater permanency of the effects of national, than of individual conduct. Existing millions, and for the most part future generations, are concerned in the present measures of a government; while the consequences of the private actions of an individual ordinarily terminate with himself, or are circumscribed within a narrow compass:

Whence it follows that an individual may, on numerous occasions, meritoriously indulge the emotions of generosity and benevolence, not only without an eye to, but even at the expense of, his own interest. But a government can rarely, if at all, be justifiable in pursuing a similar course: and, if it does so, ought to confine itself within much stricter bounds.* Good offices which are indifferent to the interest of a nation performing them, or which are compensated by the existence or expectation of some reasonable equivalent, or which produce an essential good to the nation to which they are rendered, without real detriment

* This conclusion derives confirmation from the reflection, that under every form of government, rulers are only trustees for the happiness and interest of their nation, and cannot, consistently with their trust, follow the suggestions of kindness or humanity towards others, to the prejudice of their constituents.

to the affairs of the benefactors, prescribe perhaps the limits of national generosity or benevolence.

It is not here meant to recommend a policy absolutely selfish or interested in nations; but to show, that a policy regulated by their own interest, as far as justice and good faith permit, is, and ought to be, their prevailing one; and that either to ascribe to them a different principle of action, or to deduce, from the supposition of it, arguments for a self-denying and self-sacrificing gratitude on the part of a nation, which may have received from another good offices, is to misrepresent or misconceive what usually are, and ought to be, the springs of national conduct.

These general reflections will be auxiliary to a just estimate of our real situation with regard to France; of which a closer view will be taken in a succeeding paper.

NO. V.

July 13th, 1793.

France, the rival, time immemorial, of Great Britain, had, in the course of the war which ended in 1763, suffered from the successful arms of the latter the severest losses and the most mortifying defeats. Britain from that moment had acquired an ascendant in the affairs of Europe, and in the commerce of the world, too decided and too humiliating to be endured without extreme impatience, and an eager desire of finding a favorable opportunity to destroy it, and to repair the breach which had been made in the national glory. The animosity of wounded pride, conspired with calculations of interest, to give a keen edge to that impatience, and to that desire.

The American revolution offered the occasion. It early attracted the notice of France, though with extreme circumspection. As far as countenance and aid may be presumed to have been given prior to the epoch of the acknowledgment of our independence, it will be no unkind derogation to assert, that they

were marked neither with liberality, nor with vigor; that they wore the appearance rather of a desire to keep alive disturbances which might embarrass a rival, than of a serious design to assist a revolution, or a serious expectation that it could be effected.

The victories of Saratoga, the capture of an army, which went a great way towards deciding the issue of the contest, decided also the hesitations of France. They established in the government of that country, a confidence of our ability to accomplish our purpose, and, as a consequence of it, produced the treaties of alliance and commerce.

It is impossible to see in all this any thing more, than the conduct of a jealous competitor, embracing a most promising opportunity to repress the pride, and diminish the power of a dangerous rival, by seconding a successful resistance to its authority, with the object of lopping off a valuable portion of its dominions. The dismemberment of this country from Great Britain was an obvious, and a very important interest of France. It cannot be doubted, that it was both the determining motive and an adequate compensation, for the assistance afforded to us.

Men of sense, in this country, derived encouragement to the part which their zeal for liberty prompted them to take in our revolution, from the probability of the co-operation of France and Spain. It will be remembered, that this argument was used in the publications of the day; but upon what was it bottomed? Upon the known competition between those nations and Great Britain, upon their evident interest to reduce her power and circumscribe her empire; not certainly upon motives of regard to our interest, or of attachment to our cause. Whoever should have alleged the latter, as the grounds of the expectation held out, would have been then justly considered as a visionary or a deceiver. And whoever shall now ascribe to such motives the aid which we did receive, would not deserve to be viewed in a better light.

The inference from these facts is not obscure. Aid and co-operation, founded upon a great interest, pursued and obtained by the party rendering them, is not a proper stock upon which to

engraft that enthusiastic gratitude, which is claimed from us by those who love France more than the United States.

This view of the subject, extorted by the extravagancy of such a claim, is not meant to disparage the just pretensions of France to our good-will. Though neither in the motives to the succors which she furnished, nor in their extent, (considering how powfully the point of honor, in such war, reinforced the considerations of interest when she was once engaged,) can be found a sufficient basis for that gratitude which is the theme of so much declamation; yet we shall find, in the manner of affording them, just cause for our esteem and friendship.

France did not attempt, in the first instance, to take advantage of our situation to extort from us any humiliating or injurious concessions, as the price of her assistance; nor afterwards, in the progress of the war, to impose hard terms as the condition of particular aids.

Though this course was certainly dictated by policy; yet it was a magnanimous policy, such as always constitutes a title to the approbation and esteem of mankind; and a claim to the friendship and acknowledgment of the party in whose favor it is practised.

But these sentiments are satisfied on the part of the nation, when they produce sincere wishes for the happiness of the party from whom it has experienced such conduct, and a cordial disposition to render all good and friendly offices, which can be rendered without prejudice to its own solid and permanent interests.

To ask of a nation so situated, to make a sacrifice of substantial interest; to expose itself to the jealousy, ill-will, or resentment of the rest of the world; to hazard, in an eminent degree, its own safety, for the benefit of the party who may have observed towards it the conduct which has been described; would be to ask more than the nature of the case demands, more than the fundamental maxims of society authorize, more than the dictates of sound reason justify.

A question has arisen, with regard to the proper object of that gratitude, which is so much insisted upon: whether it be the

unfortunate prince by whom the assistance received was given; or the nation of whom he was the chief or the organ? It is extremely interesting to the national justice, to form right conceptions on this point.

The arguments which support the latter idea, are as follows:

"Louis the XVI. was but the constitutional agent of the French people. He acted for and on behalf of the nation; it was with their money and their blood he supported our cause. It is to them, therefore, not to him, that our obligations are due. Louis the XVI., in taking our part, was no doubt actuated by state policy. An absolute prince could not love liberty. But the people of France patronized our cause with zeal, from sympathy in its object. The people, therefore, not its monarch, are entitled to our sympathy."

This reasoning may be ingenious; but it is not founded in nature or fact.

Louis the XVI., though no more than the constitutional agent of the nation, had at the time the sole power of managing its affairs, the legal right of directing its will and its force. It belonged to him to assist us, or not, without consulting the nation; and he did assist without such consultation. His will alone was active; that of the nation passive. If there was kindness in the decision, demanding a return of good-will, it was the kindness of Louis XVI.—his heart was the depository of the sentiment. Let the genuine voice of nature, then, unperverted by political subtleties, pronounce whether the acknowledgment, which may be due for that kindness, can be equitably transferred from him to others, who had no share in the decision; whether the principle of gratitude ought to determine us to behold with indifference his misfortunes, and with satisfaction the triumphs of his foes.

The doctrine, that the prince is the organ of his nation, is conclusive to enforce the obligations of good faith between two states; in other words, the observance of duties stipulated in treaties for national purposes; and it will even suffice to continue to a nation a claim to the friendship and good-will of another, resulting from friendly offices done by its prince; but it would

be to carry the principle much too far, and to render it infinitely too artificial to attribute to it the effect of transferring such a claim from the prince to the nation, by way of opposition and contrast. Friendship, good-will, gratitude for favors received, have so inseparable a reference to the motives with which, and to the persons by whom they were rendered, as to be incapable of being transferred to another at his expense.

But Louis XVI., it is said, acted from reasons of state, without regard to our cause; while the people of France patronized it with zeal and attachment.

As far as the assertion with regard to the monarch may be well founded, and is an objection to our gratitude to him, it destroys the whole fabric of gratitude to France. For our gratitude is, and must be, relative to the services performed. The nation can only claim it on the score of their having been rendered by their agent with their means. If the views with which he performs them divested them of the merit which ought to inspire gratitude, none is due. The nation no more than their agent can claim it.

With regard to the individual good wishes of the citizens of France, as they did not produce the services rendered to us as a nation, they can be no foundation for national gratitude. They can only call for a reciprocation of individual good wishes. They cannot form the basis of public obligation.

But the assertion takes more for granted than there is reason to believe true.

Louis the XVI., no doubt took part in our contest from reasons of state; but Louis the XVI. was a man, humane, and kind-hearted. The acts of his early youth had entitled him to this character. It is natural for a man of this disposition to become interested in the cause of those whom he protects or aids; and if the concurrent testimony of the period may be credited, there was no man in France more personally friendly to the cause of this country than Louis the XVI. I am much misinformed, if repeated declarations of the venerable Franklin did not attest this fact.

It is a just tribute to the people of France to admit, that they

manifested a lively interest in the cause of America; but while motives are scanned, who can say how much of it is to be ascribed to the antipathy which they bore to their rival neighbor; how much to their sympathy in the object of our pursuit? It is certain that the love of liberty was not a national sentiment in France, when a zeal for our cause first appeared among that people.

There is reason to believe too, that the attachment to our cause, which ultimately became very extensive, if not general, did not originate with the mass of the French people. It began with the circles more immediately connected with the court, and was thence diffused through the nation.

This observation, besides its tendency to rectify ideas, which are calculated to give a false current to the public feeling, may serve to check the spirit of illiberal invective, which has been wantonly indulged against those distinguished friends of America, who, though the authors of the French revolution, have fallen victims to it; because their principles would not permit them to go the whole length of an entire subversion of the monarchy.

The preachers of gratitude are not ashamed to brand Louis the XVI. as a tyrant, La Fayette as a traitor. But how can we wonder at this, when they insinuate a distrust even of a ——!!!

In urging the friendly disposition to our cause, manifested by the people of France, as a motive to our gratitude towards that people, it ought not to be forgotten, that those dispositions were not confined to the inhabitants of that country. They were eminently shared by the people of the United Provinces, produced to us valuable pecuniary aids from their citizens, and eventually involved them in the war on the same side with us. It may be added too, that here the patronage of our cause emphatically began with the mass of the community, not originating as in France with the government, but finally implicating the government in the consequences.

Our cause had also numerous friends in other countries; even in that with which we were at war. Conducted with prudence, moderation, justice, and humanity, it may be said to have

been a popular cause among mankind, conciliating the countenance of princes, and the affection of nations.

The dispositions of the individual citizens of France can therefore in no sense be urged, as constituting a peculiar claim to our gratitude. As far as there is foundation for it, it must be referred to the services rendered to us; and, in the first instance, to the unfortunate monarch that rendered them. This is the conclusion of nature and reason.

NO VI.

July 17th, 1793.

The very men who not long since, with a holy zeal, would have been glad to make an *auto da fé* of any one who should have presumed to assign bounds to our obligations to Louis the XVI., are now ready to consign to the flames those who venture even to think that he died a proper object of our sympathy or regret. The greatest pains are taken to excite against him our detestation. His supposed perjuries and crimes are sounded in the public ear, with all the exaggerations of intemperate declaiming. All the unproved and contradicted allegations, which have been brought against him are taken for granted, as the oracles of truth, on no better grounds than the mere general presumptions, that he could not have been a friend to a revolution which stripped him of so much power; that it is not likely the convention would have pronounced him guilty, and consigned him to so ignominious a fate, if he had been really innocent.

It is possible that time may disclose facts and proofs, which will substantiate the guilt imputed to Louis: but these facts and proofs have not yet been authenticated to the world; and justice admonishes us to wait for their production and authentication.

Those who have most closely attended to the course of the transaction, find least cause to be convinced of the criminality of the deceased monarch. While his counsel, whose characters

give weight to their assertions, with an air of conscious truth, boldly appeal to facts and proofs, in the knowledge and possession of the convention, for the refutation of the charges brought against him, the members of that body, in all the debates upon the subject which have reached this country, either directly from France, or circuitously through England, appear to have contented themselves with assuming the existence of the facts charged, and inferring from them a criminality which, after the abolition of the royalty, they were interested to establish.

The presumption of guilt drawn from the suggestions which have been stated, is more than counterbalanced by an opposite one, which is too obvious not to have occurred to many, though I do not recollect yet to have met with it in print. It is this:

If the convention had possessed clear evidence of the guilt of Louis, they would have promulgated it to the world in an authentic and unquestionable shape. Respect for the opinion of mankind, regard for their own character, the interest of their cause, made this an indispensable duty; nor can the omission be satisfactorily ascribed to any other reason than the want of such evidence.

The inference is, that the melancholy catastrophe of Louis XVI., was the result of a supposed political expediency, rather than of real criminality.

In a case so circumstanced, does it, can it consist with our justice or our humanity, to partake in the angry and vindictive passions which it is endeavored to excite against the unfortunate monarch? Was it a crime in him to have been born a prince? Could this circumstance forfeit his title to the commiseration due to his misfortunes as a man?

Would gratitude dictate to a people, situated as are the people of this country, to lend their aid to extend to the son the misfortunes of the father? Should we not be more certain of violating no obligation of that kind, and of not implicating the delicacy of our national character, by taking no part in the contest, than by throwing our weight into either scale?

Would not a just estimate of the origin and progress of our relations to France, viewed with reference to the mere question

of gratitude, lead us to this result—that we ought not to take part against the son and successor of a father, on whose sole will depended the assistance which we received; that we ought not to take part with him against the nation, whose blood and whose treasure had been, in the hands of the father, the means of that assistance?

But we are sometimes told, by way of answer, that the cause of France is the cause of liberty; and that we are bound to assist the nation on the score of their being engaged in the defence of that cause. How far this idea ought to carry us, will be the subject of future examination.

It is only necessary here to observe, that it presents a question essentially different from that which has been in discussion. If we are bound to assist the French nation, on the principle of their being embarked in the defence of liberty, this is a consideration altogether foreign to that of gratitude. Gratitude has reference only to kind offices received. The obligation to assist the cause of liberty, must be deduced from the merits of that cause and from the interest we have in its support. It is possible that the benefactor may be on one side; the defenders and supporters of liberty on the other. Gratitude may point one way, the love of liberty another. It is therefore important to just conclusions, not to confound the two things.

A sentiment of justice, more than the importance of the question itself, has led to so particular a discussion respecting the proper object of whatever acknowledgment may be due from the United States, for the aid which they received from France during their own revolution.

The extent of the obligation which it may impose is by far the most interesting inquiry. And though it is presumed, that enough has been already said to evince, that it does in no degree require us to embark in the war; yet there is another, and a very simple view of the subject, which is too convincing to be omitted.

The assistance derived from France was afforded by a great and powerful nation, possessing numerous armies, a respectable fleet, and the means of rendering it a match for the force to be

encountered. The position of Europe was favorable to the enterprise; a general disposition prevailing to see the power of Britain abridged. The co-operation of Spain was very much a matter of course, and the probability of other powers becoming engaged on the same side not remote. Great Britain was alone, and likely to continue so; France had a great and persuasive interest in the separation of this country from her. In this situation, with much to hope and little to fear, she took part in our quarrel.

France is at this time singly engaged with the greatest part of Europe, including all the first-rate powers except one; and in danger of being engaged with the rest. To use the emphatic language of a member of the national convention, she has but one enemy, and that is all Europe. Her internal affairs are, without doubt, in serious disorder; her navy comparatively inconsiderable. The United States are a young nation: their population, though rapidly increasing, still small; their resources, though growing, not great; without armies, without fleets; capable, from the nature of the country and the spirit of its inhabitants, of immense exertions for self-defence, but little capable of those external efforts which could materially serve the cause of France. So far from having any direct interest in going to war, they have the strongest motives of interest to avoid it. By embarking with France in the war, they would have incomparably more to apprehend than to hope.

This contrast of situations and inducements is alone a conclusive demonstration, that the United States are not under an obligation, from gratitude, to join France in the war. The utter disparity between the circumstances of the service to be rendered, and of the service received, proves, that the one cannot be an adequate basis of obligation for the other. There would be a manifest want of equality, and consequently of reciprocity.

But complete justice would not be done to this question of gratitude, were no notice to be taken of the address which has appeared in the public papers, (the authenticity of which has not been impeached,) from the convention of France to the United States, announcing the appointment of the present minister pleni-

potentiary. In that address the convention informs us, that "the support which the ancient French court had afforded the United States to recover their independence, was only the fruit of a base speculation; and that their glory offended its ambitious views, and the ambassadors of France bore the criminal orders of stopping the career of their prosperity."

If this information is to be admitted in the full force of the terms, it is very fatal to the claim of gratitude towards France. An observation similar to one made in a former paper occurs here. If the organ of the nation, on whose will the aid which was given depended, acted not only from motives irrelative to our advantage, but from unworthy motives, or, as is alleged, from a base speculation; if afterwards he displayed a temper hostile to the confirmation of our security and prosperity, he acquired no title to our gratitude in the first instance, or he forfeited it in the second. And the people of France, who can only demand it in virtue of the conduct of their agent, must, together with him, renounce the pretension. It is an obvious principle, that if a nation can claim merit from the good deeds of its sovereign, it must answer for the demerit of his misdeeds.

But some deductions are to be made from the suggestions in the address of the convention, on account of the motives which evidently dictated the communication. Their zeal to alienate the good-will of this country from the late monarch, and to increase the odium of the French nation against the monarchy, which was so ardent as to make them overlook the tendency of their communication to deprive their votaries among us of the plea of gratitude, may justly be suspected of exaggeration.

The truth probably is, that the base speculation charged, amounts to nothing more than that the government of France, in affording us assistance, was actuated by the motives which have been attributed to it, namely, the desire of promoting the interest of France, by lessening the power of Great Britain, and opening a new channel of commerce to herself; that the orders said to have been given to the ambassadors of France, to stop the career of our prosperity, are resolvable into a speculative jealousy of the ministers of the day, lest the United States, by becoming as

powerful and great as they are capable of being under an efficient government, might prove formidable to the European possessions in America. With these qualifications, the address offers no new discovery to the intelligent and unbiased friends of their country. They knew long ago, that the interest of France had been the governing motive of the aid afforded; and they saw clearly enough in the conversation and conduct of her agents, while the present Constitution of the United States was under consideration, that the government, of which they were the instruments, would have preferred our remaining under the old form. They perceived also, that these views had their effect upon some of the devoted partisans of France among ourselves; as they now perceive, that the same characters are embodying, with all the aid they can obtain, under the same banner, to resist the operation of that government of which they withstood the establishment.

All this was, and is seen; and the body of the people of America are too discerning to be long in the dark about it: too wise to have been misled by foreign or domestic machinations, they adopted a Constitution which was necessary to their safety and to their happiness: too wise still to be ensnared by the same machinations, they will support the government they have established, and will take care of their own peace, in spite of the insidious efforts which are employed to detach them from the one, and to disturb the other.

The information which the address of the convention contains, ought to serve as an instructive lesson to the people of this country. It ought to teach us not to overrate foreign friendships; and to be upon our guard against foreign attachments. The former will generally be found hollow and delusive; the latter will have a natural tendency to lead us aside from our own true interest, and to make us the dupes of foreign influence. Both serve to introduce a principle of action, which, in its effects, if the expression may be allowed, is anti-national. Foreign influence is truly the Grecian horse to a republic. We cannot be too careful to exclude its entrance. Nor ought we to imagine, that it can only make its approaches in the gross form of direct bribery. It is then most dangerous when it comes under the

patronage of our passions, under the auspices of national prejudice and partiality.

I trust the morals of this country are yet too good to leave much to be apprehended on the score of bribery. Caresses, condescensions, flattery, in unison with our prepossessions, are infinitely more to be feared: and as far as there is opportunity for corruption, it is to be remembered, that one foreign power can employ this resource as well as another; and that the effect must be much greater, when it is combined with other means of influence, than where it stands alone.

NO. VII.

July 20th, 1793.

The remaining objection to the proclamation of neutrality, still to be discussed, is, that it was out of time and unnecessary.

To give color to this objection it is asked, why did not the proclamation appear, when the war commenced with Austria and Prussia? Why was it forborne, till Great Britain, Holland, and Spain, became engaged? Why did not the government wait, till the arrival at Philadelphia of the minister of the French republic? Why did it volunteer a declaration not required of it by any of the belligerent parties?

To most of these questions, solid answers have already appeared in the public prints. Little more can be done, than to repeat and enforce them.

Austria and Prussia are not maritime powers. Contraventions of neutrality as against them, were not likely to take place to any extent, or in a shape that would attract their notice. It would therefore have been useless, if not ridiculous, to have made a formal declaration on the subject, while they were the only parties opposed to France.

But the reverse of this is the case with regard to Spain, Holland and England. These are all commercial and maritime

nations. It was to be expected, that their attentions would be immediately drawn towards the United States with sensibility, and even with jealousy. It was to be feared that some of our citizens might be tempted by the prospect of gain to go into measures which would injure them, and hazard the peace of the country. Attacks by some of these powers upon the possessions of France in America, were to be looked for as a matter of course. While the views of the United States, as to that particular, were problematical, they would naturally consider us as a power that might become their enemy. This they would have been the more apt to do on account of those public demonstrations of attachment to the cause of France, of which there has been so prodigal a display. Jealousy, every body knows, especially if sharpened by resentment, is apt to lead to ill treatment; ill treatment to hostility.

In proportion to the probability of our being regarded with a suspicious, and consequently an unfriendly eye, by the powers at war with France; in proportion to the danger of imprudences being committed by any of our citizens, which might occasion a rupture with them, the policy on the part of the government, of removing all doubt as to its own disposition, and of deciding the condition of the United States, in the view of the parties concerned, became obvious and urgent.

Were the United States now, what, if we do not rashly throw away the advantages we possess, they may expect to be in fifteen or twenty years, there would have been more room for an insinuation which has been thrown out, namely, that they ought to have secured to themselves some advantage, as the consideration of their neutrality: an idea, however, the justice and magnanimity of which cannot be commended. But in their present situation, with their present strength and resources, an attempt of that kind could have only served to display pretensions at once excessive and unprincipled. The chance of obtaining any collateral advantage, if such a chance there was, by leaving doubt of their intentions, as to peace or war, could not wisely have been put, for a single instant, in competition with the tendency of a contrary conduct to secure our peace.

The conduciveness of the declaration of neutrality to that end, was not the only recommendation to the adoption of the measure. It was of great importance that our own citizens should understand, as soon as possible, the opinion which the government entertained of the nature of our relations to the warring parties, and of the propriety or expediency of our taking a side, or remaining neuter. The arrangements of our merchants could not but be very differently affected by the one hypothesis or the other; and it would necessarily have been very detrimental and perplexing to them to have been left in uncertainty. It is not requisite to say, how much our agriculture and other interests would have been likely to have suffered by embarrassments to our merchants.

The idea of its having been incumbent on the government to delay the measure for the arrival of the minister of the French republic, is as absurd as it is humiliating. Did the executive stand in need of the logic of a foreign agent to enlighten it as to the duties or interests of the nation? Or was it bound to ask his consent to a step which appeared to itself consistent with the former, and conducive to the latter?

The sense of our treaties was to be learnt from the instruments themselves. It was not difficult to pronounce beforehand, that we had a greater interest in the preservation of peace, than in any advantages with which France might tempt our participation in the war. Commercial privileges were all that she could offer of real value in our estimation, and a *carte blanche* on this head would have been an inadequate recompense for renouncing peace, and committing ourselves voluntarily to the chances of so precarious and perilous a war. Besides, if the privileges which might have been conceded were not founded in a real, permanent, mutual interest, of what value would be the treaty that should concede them? Ought not the calculation, in such case, to be upon a speedy resumption of them, with perhaps a quarrel as the pretext? On the other hand, may we not trust that commercial privileges, which are truly founded in mutual interest, will grow out of that interest; without the necessity of giving a premium for them at the expense of our peace?

To what purpose then was the executive to have waited for the arrival of the minister? Was it to give opportunity to contentious discussions; to intriguing machinations; to the clamors of a faction won to a foreign interest?

Whether the declaration of neutrality, issued upon or without the requisition of any of the belligerent powers, can only be known to their respective ministers, and to the proper officers of our government. But if it be true, that it issued without any such requisition, it is an additional indication of the wisdom of the measure.

It is of much importance to the end of preserving peace, that the belligerent nations should be thoroughly convinced of the sincerity of our intentions to observe the neutrality we profess; and it cannot fail to have weight in producing this conviction, that the declaration of it was a spontaneous act; not stimulated by any requisition on the part of either of them; but proceeding purely from our own view of our duty and interest.

It was not surely necessary for the government to wait for such a requisition; while there were advantages, and no disadvantages, in anticipation. The benefit of an early notification to our merchants, conspired with the consideration just mentioned to recommend the course which was pursued.

If in addition to the rest, the early manifestation of the views of the government has had any effect in fixing the public opinion on the subject, and in counteracting the success of the efforts which, it was to be foreseen, would be made to distract and disunite, this alone would be a great recommendation of the policy of having suffered no delay to intervene.

What has been already said, in this and in preceding papers, affords a full answer to the suggestion, that the proclamation was unnecessary. It would be a waste of time to add more.

But there has been a criticism several times repeated, which may deserve a moment's attention. It has been urged, that the proclamation ought to have contained some reference to our treaties; and that the generality of the promise to observe a conduct *friendly* and *impartial* towards the belligerent powers, ought to have been qualified with expressions equivalent to these, "*as far as may consist with the treaties of the United States.*"

The insertion of such a clause would have entirely defeated the object of a proclamation, by rendering the intention of the government equivocal. That object was to assure the powers at war, and our own citizens, that in the opinion of the executive, it was consistent with the duty and interest of the nation to observe neutrality, and that it was intended to pursue a conduct corresponding with that opinion. Words equivalent to those contended for would have rendered the other part of the declaration nugatory, *by leaving it uncertain, whether the executive did or did not believe a state of neutrality to be consistent with our treaties.* Neither foreign powers, nor our own citizens, would have been able to have drawn any conclusion from the proclamation; and both would have had a right to consider it as a mere equivocation.

By not inserting any such ambiguous expressions, the proclamation was susceptible of an intelligible and proper construction. While it denoted on the one hand, that in the judgment of the executive, there was nothing in our treaties obliging us *to become a party in the war;* it left it to be expected on the other, that all stipulations compatible with neutrality, according to the laws and usages of nations, would be enforced. It follows, that the proclamation was, in this particular, exactly what it ought to have been.

The words, "make known the disposition of the United States," have also given a pretext for cavil. It has been asked, how could the President undertake to declare the disposition of the United States? The people, for aught he knew, may have a very different sentiment. Thus, a conformity with republican propriety and modesty is turned into a topic of accusation.

Had the President announced his own disposition, he would have been chargeable with egotism, if not presumption. The constitutional organ of intercourse between the United States and foreign nations, whenever he speaks to them, it is in that capacity; it is in the name and on the behalf of the United States. It must therefore be with greater propriety, that he speaks of their disposition, than of his own.

It is easy to imagine, that occasions frequently occur in the

communications to foreign governments and foreign agents, which render it necessary to speak of the friendship or *friendly disposition* of the United States, of *their disposition* to cultivate harmony and good understanding, to reciprocate neighborly offices, and the like. It is usual, for example, when public ministers are received, for some complimentary expressions to be interchanged. It is presumable, that the late reception of the French minister did not pass, without some assurance on the part of the President, of the friendly disposition of the United States towards France. Admitting it to have happened, would it be deemed an improper arrogation? If not why was it more so, to declare the disposition of the United States to observe a neutrality in the existing war?

In all such cases, nothing more is to be understood, than an official expression of the *political* disposition of the nation, *inferred* from its political relations, obligations, and interests. It is never to be supposed, that the expression is meant to convey the precise state of the individual sentiments or opinions of the great mass of the people.

Kings and princes speak of their own dispositions; the magistrates of republics, of the dispositions of their nations. The President, therefore, has evidently used the style adapted to his situation, and the criticism upon it is plainly a cavil.

NO JACOBIN.

I.

August, 1793.

It is publicly rumored in this city, that the minister of the French republic has *threatened to appeal from the President of the United States to the people.*

Various publications which have recently appeared in the

papers, particularly that under the signature of "*Juba*," in the National Gazette of the 10th instant, and that under the signature of "*a Jacobin*," in the General Advertiser of Friday last, seem to have begun the appeal.

Several traits in the latter carry conjectures of the writer to the source of the threatened appeal. The idiom of it is evidently foreign, and it abounds in terms and phrases which are said by those who have access to him, to be frequently in the mouth of the supposed author. That the idiom is foreign will appear to a competent judge of the English language, from the structure of every sentence; but there are particular expressions which will prove it even to those who have no very accurate knowledge of it. Witness these extracts: "I cannot be convinced that a plan of this kind *should* be approved by Congress or the people of the United States,"—"through a desire of giving a proof of the *loyalty* and confidence which ought to exist between the agents of free nations." The word "*loyalty*" in the English language is only used to denote fidelity to a prince, to a lover, or to a mistress. In the French it is a *familiar* expression of good faith, candor, sincere dealing, &c.

That it probably proceeds from the source of the threatened appeal is to be inferred from the positive assertion of things, which if true, can only be known to the principal officers of the general government, and to the public agents of France. It is said, that orders were given to the military to take possession of a French vessel without *previous complaint, explanation, or communication with the agents of the French republic.* Again it is said, the minister of France caused to be returned, the Grange, upon a *simple request* of the American government. Declarations like these, could only with propriety be made with so much peremptoriness by parties to the transaction.

Indeed, they seem intended to dismiss even the appearance of concealment. Let us now see in what manner the heavy charges of breach of treaty, which are brought against the executive of the general government, are supported.

The first is the *detention of French vessels armed in the ports of the United States;* which is said to be contrary to the 22d article

of the treaty of commerce between the United States and France.

The words of the French original upon which this construction is put, are as follows. " Il ne sera permis a aucun corsaire êtranger non appartenant a quelque sujet de sa majesté tres chretienne ou a aucun citoyen des dits Etats Units, lequel aura un commission de la part d'un prince ou d'une puissance en guerre avec l'une des deux nations, d'armer leurs vaissaux dans les ports de l'une des deux parties ni d'y vendre les prizes qu'il aura faites, &c."

The true translation of these words is, it shall not be permitted to any *foreign privateer, not belonging to subjects of His Most Christian Majesty, nor to citizens of the United States*, which shall have commissions from a prince or power at war with one of the two nations, to arm their vessels in the ports of the one or the other of the two parties, nor there to sell the prizes which they shall have made, &c.

The plain and evident meaning of this translation is, that neither of the contracting parties shall be *at liberty to permit* the privateers of a power at war with the other, to fit or arm in its ports, or sell their prizes there, &c.

But this stipulation not *to permit* the privateers of powers at war with either of the parties, to fit or arm in the ports of the other, can by no rule of construction be turned into an agreement to permit the privateers of one party when engaged in war with a third power, with whom the other party is at peace, to fit or arm in the ports of the party at peace. This would be to convert *a prohibition against doing one thing* into a *contract to do* another.

Nor is there a syllable in the whole sentence that even implies such a contract. The attempt seems to be to deduce it from the words " *not belonging to subjects of His Most Christian Majesty, nor citizens of the United States*," as if these words were introduced by way of exception to the generality of the terms " foreign privateers," to imply that the privateers of the subjects or citizens of the parties might be permitted to fit or arm in the ports of each other.

But these words " *not belonging, &c.*," must be taken merely as

words of additional description, more clearly to express what is intended by the terms "*foreign privateers.*" Nor are they useless to this end. The sense of the terms "foreign privateers," is not sufficiently precise or clear without them, for the privateers of either party would be *foreign* with respect to the other, but the intention being to designate privateers *foreign* to both parties. To render this intention unequivocal, the words "not belonging to the subjects of His Most Christian Majesty, nor to the citizens of the United States," are added, which fixes the true meaning. It is equivalent to having said, it shall not be permitted to foreign privateers, *that is to say,* privateers "not belonging," &c. Unless too, these words are understood in this manner, they make nonsense of the whole clause. To perceive this, it is only necessary to remark, that the foreign privateers intended to be prohibited from the privilege of arming, &c., are expressly those *which have commissions from a power at war with one of the parties.*

Then, if the words "not belonging, &c.," are to be used as words of exception, the natural reading of the clause would be as follows. "It shall not be permitted to *foreign privateers* which have commissions from a prince or state at war with one of the two nations, to fit or arm in the ports of the other *unless* those privateers so commissioned belong to the subjects or citizens of the one or the other of the contracting parties."

This exception would then operate to produce one of these two effects, both equally absurd. Either to authorize one of the contracting parties to permit privateers belonging to their own citizens, under commission from a power at war with the other, to fit or arm in its ports; thus allowing its subjects or citizens with impunity, and even countenance, to partake in the war against the other of the contracting parties; or to authorize one of the parties to permit privateers belonging to the subjects or citizens of the other, under commission from a power at war with such other party, to fit or arm in the ports of the first mentioned party; thus enabling one party to give aid and countenance to the subjects of the other, when carrying on war against their own nation or sovereign, and consequently in the situation of rebels or pirates.

No sense more rational can be given to the words in question, when understood as words of exception, having regard to the due and natural connection and import of the terms which immediately precede and succeed. It follows that they cannot be understood as words of exception, but merely as words of description, and that the inference attempted to be drawn from them is forced and unwarrantable. Indeed, neither as words of exception, or as words of description, do they give the least color to that inference.

If the printed copies of the treaty are accurate, the punctuation is a farther illustration that the words "not belonging, &c.," are merely words of additional description. In the French original, they are not divided even by a comma from the words "corsaire êtranger,"—"foreign privateer," which they immediately follow, forming with them the first member of the sentence and connected with the next member of it by the pronoun "lequel," or which il ne sera permis a aucun corsaire êtranger non appartenant a quelque sujet de sa majesté tres chretienne, ou a un citoyen des dits Etats Unis, lequel, &c.

The words in question cannot, without making the clause nonsense, be understood as words of exception in another view. The words "*foreign privateers*," are naturally to be understood as privateers foreign to both parties. If the words, "not belonging, &c.," are not taken as words of additional description, but of exception, that is to say, if they are to be understood as equivalent to saying, "*except* privateers belonging to the subjects of, and commissioned by one of the parties," it leads to a contradiction of terms: it would be equivalent to saying, "it shall not be permitted to foreign privateers, not *foreign*, &c.," for privateers belonging to the subjects of and commissioned by one of the parties, would not be foreign to both the parties.

But if it were possible consistently with the context, to give the words "non appartenant," or "not belonging," the effect of an exception favoring the construction which is contended for, it could not at any rate go further than to authorize vessels previously fitted out and commissioned in the ports of France, and coming into our ports in the capacity of privateers, there to fit or

arm; it could not possibly extend to the original fitting out, arming, and commissioning of privateers by one party in the ports of another; the expressions of every part of the clause presuppose that the vessels intended are already privateers, having commissions, &c., when they come into the ports of the respective parties.

And it is well known, that the detention complained of applies entirely to vessels which have been made privateers in our own port.

If any confirmation were requisite, in so plain a case, of the construction which appears to have been adopted by the executive of the general government, it might be found in the regulations of France herself at the time our treaty with her was made. Those regulations show, that it was the policy of France to restrict to her own ports the fitting out of privateers, with a variety of precautions to secure their good behavior, their accountability, and the rights and interests of all concerned; from which it is to be inferred that the clause in question, was not intended to establish a right on either side to fit out privateers in the ports of the other, such a right being incompatible with the then existing policy of France.

Indeed, such a right would be incompatible with the preservation of peace by either party, when the other was engaged at war, for as it would make one auxiliary to the other in this vexatious and irritating mode of hostility to an indefinite extent, it would be stronger than the case of a definite succor stipulated on a defensive alliance, and could not fail to involve the party permitting it in the war.

It is not presumable that a mere incidental regulation in a treaty of commerce could have been intended to include a consequence so important; and it could only have been admitted upon the strength of terms explicit and unequivocal.

All advantages relating to war, which are stipulated in favor of one nation, so as to be incommunicable to another, include more or less of hazard. They are apt to produce irritations, which produce war. In every case of doubt, therefore, upon the construction of treaties, the rule is against the concession of such

advantages. The principles of interpretation favor nothing that tends to put the peace of a nation in jeopardy. It is incumbent on a power at war, claiming of a neutral nation, on the ground of treaty, particular privileges of a military nature, to rest his pretensions upon clear and definite, not upon doubtful or obscure expressions. When founded upon expressions of the latter kind, this claim is always to be rejected.

Hence, consequently, the pretension to fit or arm in our ports privateers antecedently commissioned in the ports of France, beyond the mere point of reparation, is inadmissible. It is not necessary to admit it for the sake of finding a useful object for the clause in question. That clause will have a very natural and a very useful application, when it is understood as merely a prohibition to prevent a power at war with the other, to fit or arm privateers in the ports of the party at peace. For without it each party would have been at liberty to grant by treaty such a right to other powers, which is now prevented.

An argument against every construction of this kind, may be drawn from the seventeenth article of the treaty of commerce. This article grants affirmatively to the armed vessels of each party, certain privileges in the ports of the other. 'Tis there we should naturally look for a privilege so important as the one claimed; not in an article, the general object of which plainly is to exclude other powers from privileges in the ports of the contracting parties. The omission of the privilege claimed in the clause where it would naturally be included, is a reason against admitting it upon a forced construction of a clause where it would not naturally be expected.

Upon the whole, there is no plausible ground for the pretension set up. The natural construction of the clause of the treaty which has been quoted, obviously excludes it, and the United States cannot, ex gratiâ, accede to it without departing from neutrality, and encountering the mischiefs of a war with which they have nothing to do.

The result is, that a pretension to fit out privateers in our ports against our will, is an insult to our understandings, and a glaring infraction of our rights.

The residue of the Jacobin's charges will be hereafter examined.

"NO JACOBIN."

NO. II.

1793.

The next charge of breach of treaty exhibited by the Jacobin against the executive of the United States is, to use his own language, "the seizure of prizes made known to the agents of the French republic at the moment those prizes were held up for sale. The orders given to the military to take possession of a French vessel, without previous complaint, explanation, or communication with the agents of the French republic, said to be contraventions of the 17th article of the treaty of commerce, by which it is provided "that it shall be lawful for the ships of war and privateers of either party, freely to carry whithersoever they please, the ships and goods taken from their enemies, without being obliged to pay any duty to the officers of the admiralty or any other judges, and without those prizes entering into the ports of the one party or the other, being liable to be arrested or seized, nor can the officers of the places take cognizance of the validity of the said prizes, which may go out and be conducted freely and in all liberty to the places expressed in their commissions, which the commanders of the said vessels shall be obliged to show, &c."

It is presumed, that the facts complained of are more particularly applicable to the case of the ship William, arrested in this port; though it is understood that the same proceedings, with some small difference of circumstances, took place in the case of another vessel in New-York.

To judge of the propriety of the complaint in each case, it is necessary to attend to the following particulars. According to the general laws and usage of nations, the jurisdiction of every country extends a certain distance into the sea along the whole

extent of its coast. What this distance is, remains a matter of some uncertainty, though it is an agreed principle that it at least extends to the utmost range of cannon shot, that is, not less than four miles. But most nations claim and exercise jurisdiction to a greater extent. Three leagues, or nine miles, seem to accord with the most approved rule, and would appear from Martin, a French author, to be that adopted by France, though Valin, another French author, states it at only two leagues, or six miles.

Within this distance of the coast of a neutral country, all captures made by a power at war upon its enemy, are illegal and null, on the principle of its being a violation of the jurisdiction and protection of the neutral country. This principle, founded on the most evident reason, is asserted by all writers, and practised upon by all nations.

Every nation has a right to prevent a violation of its jurisdiction, and consequently to prevent the making of captures within that jurisdiction. A right to redress if such captures be made is a necessary consequence. A neutral nation is bound to prevent injuries within its jurisdiction to a power with which it is at peace, by any other power. In other words, it owes fair guard and protection to the citizens and subjects of every power with which it is at peace. It is therefore bound to exert itself to prevent captures within the limits of its protection of the subjects or property of one power by another power, and if such capture happens to avail itself of its own right of redress, against the power making it, for the purpose of effecting a restitution of the person or thing captured.

This is too plain to be denied; but it is pretended that the redress of the injury is to be sought through the channel of negotiation only, and not by the immediate exertion of the authority of the neutral nation, to cause restitution to be made in the first instance, either by means of courts of justice, or by the use of the public force.

It may boldly be affirmed that this position is founded neither on principle nor the opinion of writers, nor on the practice of nations; not on principle, because it is unreasonable to suppose

that a nation ought to postpone the opportunity of redressing itself and of doing justice to another, upon the uncertain issue of a negotiation of which it cannot forsee the success. When the object is out of its reach, the way of negotiation ought to be pursued; for the alternative then is to negotiate or go to war, and a due moderation requires that a preference should be given to the milder course; but if the object to which the injury relates is within its power, the most prudent as well as the most dignified and efficacious course is to embrace the opportunity of rectifying what has been done amiss, for this seems to terminate the affair, and avoid the controversies and heats too often incident to negotiation.

The position in question is not founded on the opinion of writers, for these establish a contrary doctrine—as may be seen in Bynkershoek's Quæstiones Publici Juris, Book I, Chap. 8; Vatel, Book II. Sec. 84, 101, 102, and 289; 2 R. Inst., 587-589; Leoline Jenkin's Life and Papers, vol. 1, xcv.; vol. 2, page 727, 733, 751, 752, 754, 755, 780; Woodeson's Lectures, page 443; Douglass' Rep., 595; Lee on Captures, Cap. IX.—nor on the practice of nations, for this is in favor of summary prevention and redress, as may be seen by one example which those writers quote, and is within experience of individuals among ourselves. A neutral fortress never scruples to fire upon the vessels of any power which attempts to commit a hostility against another power within reach of its cannon, nor a neutral sovereign or magistrate to prevent or restore captures made within his jurisdiction.*

The foregoing observations will lead to a right judgment of the merits of the complaint which is made.

* Indeed our treaties with several powers oblige us to this conduct. In the 5th article of that with Holland, the 2d of that with Sweden, the 7th of that with Prussia, the United States in affirmance of the general doctrine of the laws of nations "bind themselves by all means in their power to endeavor to protect all vessels and other effects belonging to the subjects and inhabitants of those powers respectively, in their ports, roads, havens, internal seas, passes, rivers, and as far as their jurisdiction extends at sea, and to recover and cause to be restored to the true proprietors, all such vessels and effects which shall be taken under their (protection) jurisdiction," which is a plain indication that our then negotiators and government never dreamt of the newly invented construction of that treaty.

Each of the vessels in question is understood to have been taken within a distance short of the least of the two distances which has been mentioned as forming the rule observed by France, one of them seems less than three miles, the other within less than five miles.

It may therefore be affirmed that both these captures were made within the limits of the protection of the United States, and in violation of their jurisdiction. And it will follow, from the principles which have been maintained, that the United States have a right and are bound to cause restitution of those prizes.

To this conclusion is opposed that provision of the article which declares, that the local officers cannot take cognizance of the validity of the prizes which are carried by one party into the harbors or ports of the other.

But there is no established rule of interpretation with regard either to laws or treaties, than that general expressions shall never be so understood as to involve unreasonableness or absurdity. According to this rule the general expression "the local officers," (les officers des lieux) "cannot take cognizance of the validity of the prizes," must naturally be understood with reference to prizes made on the high seas without the jurisdiction of the party into whose harbors or ports they are brought, not with reference to prizes taken within the protection and jurisdiction of such party. The following qualification is from the nature of things implied in the general terms, to wit: provided the prizes have not been taken within the jurisdiction of the party in whose ports they shall be. An interpretation so extensive as to embrace prizes made within the jurisdiction of such party, would lead to a consequence not less absurd than this. A vessel of the United States might be taken by a French privateer in the port of Philadelphia, and there would be no power to question the validity of the prize or enforce restitution. Such a consequence is too violent to be admissible, and a position which includes it refutes itself. It can never be imagined that any nation could mean to tie up her hands to such an extent.

If then prizes of vessels belonging to the United States or their citizens shall be excepted, it will follow that the clause

cannot in this respect be taken in a literal sense; and if it is to be taken in a rational, not a literal sense, it will admit the exceptions of all prizes taken within the jurisdiction or protection of the party within whose territories they are found, being at peace with the nation of whom or of whose citizens it is made, for a state owes protection not only to its own citizens but to the citizens of every other nation with which it is at peace, coming within its jurisdiction for commerce or any other lawful cause. Nor can it even be supposed upon the strength of mere general expressions that it has meant to exchange the right of affording protection and security by its own power and authority, for that of negotiating with another nation the reparation which may be due to a violation of its jurisdiction. So essential an alienation of jurisdiction could only be deduced from precise and specific as well as express terms.

Besides such an inference is broader even than the letter of the clause. 'Tis only to the officiers des lieux, the local officers, or officers of the harbors, ports or places to which the prizes are brought, that the cognizance of their validity is forbidden; 'tis not to the general judiciary tribunals or general executive authority of the country that such cognizance is denied. The expressions, officiers des lieux, are not of a nature to comprehend them. They are therefore under no prohibition by the treaty, and consequently, as far as consists with the jus gentium or law of nations, are at liberty to interpose.

And the rule of the law of nations is this, that a neutral nation shall not interpose to examine the validity of prizes made by a power at war, from its enemies, at any place except one which is within the jurisdiction of such neutral nation. It is of the essence of jurisdiction to redress all wrongs which happen within its sphere. Powers at war have no right in derogation from the peculiar jurisdiction of a neutral nation. That jurisdiction therefore is in the same force against them as against powers at peace. What would be a marine trespass in the one case, is so in the other. A capture within the protection or jurisdiction of a neutral state is not a lawful act of war, but a

mere trespass, of course within the competency of the neutral state to redress it.*

It may be asked why, if this was the rule of the law of nations, there should have been a particular article of treaty concerning it? The answer is, 1st. That it is a common practice to introduce into treaties stipulations recognizing the rules of the law of nations, in order to avoid controversy about them, of which there are several examples in our treaties. 2d. That the article secures to France something more than the usage of several nations admits, namely, a right to continue in our ports an indefinite time, and the benefit of an exclusion of the privateers of her enemies, having made prizes of the subjects, people, or property of France, from the degree of asylum to which they would otherwise be entitled. These are sufficient objects for the article without giving to it an extension subversive of the just and necessary jurisdiction of the country.

It is clearly demonstrated by what has been said that the government of the United States has an undoubted right to interpose authority, not by mere negotiation, to effect the restoration of the ships in question to their original owners, and that the doing so, either by a direct exertion of the public force, or by means of judicial process, is consistent both with the laws of nations, and with the true meaning of our treaty with France. It therefore gives no handle to the complaint of breach of treaty. To what department of the government it most regularly belongs to effect the requisite redress—whether to the Executive or to the Judiciary, or to both indiscriminately, is not yet settled in this country, nor is it material to any foreign nation. It is a mere question between the departments of our own government. So long as nothing is done which is contrary to the laws of nations

* The rights of war only take place in the countries of the powers at war, or on the high seas which are common to both. If acts of hostility are committed within a neutral territory, they do not partake of the rights of war, they cannot be judged of by the laws of war, nor have any of the rules of war the smallest relation to them. As trespasses they are liable to be redressed in the ordinary course of justice, as infringements of territorial rights they claim redress and punishment from the executive authority of the injured country.

or to treaty, a foreign power can have no ground of complaint.

As to the point of previous application to the agents of the foreign nation concerned, this belongs to a mere question of civility, not of right; there being in every such case a direct responsibility on the part of the neutral nation to the power whose citizens or property may have been captured. The power making the capture cannot justly be dissatisfied if the surest method of performing its duty is adopted by the neutral nation. This is to take the prize in the first instance into custody, till a fair and full examination can be had into the fact with regard to the place of capture, as was done in the instances in question.

This course, too, would naturally obtain till some arrangement should have been concerted between the government and the agents of the powers at war, and is the only one which can be observed in places where there are no such agents. And it would seem, from what took place in the case of the William, immediately after her seizure, that such an arrangement has been subsequently agreed upon; which is a proof that the course pursued was not the effect of unkindly disposition. But if there had been a disposition to proceed with strictness and rigor, it will be shown in the sequel that it was fully warranted by the very disrespectful treatment we have experienced from the agents of France, who have acted towards us from the beginning more like a dependent colony than an independent nation. A state of degradation, to which I trust that the freedom of the American mind will never deign to submit.

No Jacobin.

NO. III.

1793.

Another accusation against the Executive of the United States preferred by the Jacobin, is derived from this circumstance; that while by the treaty between the United States and France

the goods of her enemies on board our ships are exempt from capture, the goods of France on board our ships are subject to the depredation of her enemies, without any steps being taken by the executive to cause French property to be returned, and to prevent similar hardships being in future imposed.

This has, if possible, still less color than any of the others.

By the general law of nations as laid down by writers, and practised upon by nations, previous to the late war between the United States and Great Britain, this rule was clearly and fully established.

That the goods of an enemy in the ships of a friend (that is, of a neutral power) are lawful prizes, and that the goods of a friend in the ships of an enemy (those called contraband excepted) are not lawful prizes. This rule is founded upon the principle that one enemy may lawfully take the goods of another wheresoever he finds them, except within the jurisdiction or dominion of a neutral state. Of course he may take them upon the high seas, where no nation can have jurisdiction or dominion. Vattel, book iii., s. 115, 116; Bynkershoek, Quæs. Jur. Pub., lib. i., cap. 13, 14.

It necessarily follows that French property taken by the enemies of France in American vessels, is by the law of nations lawful prize, and that American property (not of the contraband kind) taken by Frenchmen in the ships of their enemies, is not according to the same law lawful prize. To the forming a right judgment then on this part of the Jacobin's charges, and to determine whether France is not benefited rather than injured by the alterations which have taken place, the following observations may perhaps be useful.

During the war between the United States and Great Britain, certain powers who associated under the denomination of the armed neutrality, asserted a rule the reverse of that which had before prevailed and which has been stated. But this association, made with a view to the then existing war, terminated with it. The United States never acceded to that association. They contented themselves with introducing its principle into their treaties with such powers with whom they formed treaties. Accordingly

it is to be found in our treaties with France, Holland, Sweden, and Prussia.

Great Britain, on her part, has never acceded to the new principle as a general rule; and there are other powers of Europe who did not originally unite in the attempt to introduce it, and who are not known to have since done any act amounting to an adoption of it.

An established rule of the law of nations can only be altered by agreements between all the civilized powers, or a new usage generally adopted and sanctioned by time.

Neither having happened in the present case, the old principle must be considered as still forming the basis of the general law of nations, liable only to the exceptions resulting from particular treaties.

With France, Holland, Sweden, and Prussia, four of the belligerent parties, we have treaties containing the new principle; but with Russia, England, Spain, Portugal, Austria, Savoy, we have no such treaties. Against the former powers, therefore, we have a right to claim the new principle, as they would against us, were we in a state of war and they at peace. Between us and the latter powers the old rule must govern until a departure from it can be regulated by mutual consent.

As we cannot of right assert the new principle against those powers with whom we have not established it by treaty, so neither can we even in prudence or good policy insist upon it, unless we are prepared to support it by arms.

There is not a doubt that all the powers who are at liberty to pursue the old rule will do it. In a war of opinion and passion like the present, concessions to ill-founded or doubtful pretensions are not to be expected. Nor are the United States in a condition to attempt to enforce such claims.

But it seems that the not having hitherto manifested a disposition towards this species of knight-errantry, is an injury and offence to France. The Jacobin deems it a breach of our treaty with her, that we do not quarrel with other nations for an object which we can claim of them neither by the law of nations nor by treaty.

It appears that the Jacobin is ready enough to insist upon and even to enlarge constructively all the peculiar advantages which our treaty with France gives to her; but any circumstance of supposed inconvenience to her, is in his eyes a sore grievance, while he seems insensible to those which operate against us. This very reasonable gentleman ought to remember, that if the property of the enemies of France in our ships is protected by our treaty with her, the property of our citizens in the ships of these enemies loses by that treaty the immunity or security to which it would otherwise be entitled, and that this important sacrifice on our part was agreed to, that we might have the advantage of being the carriers during European wars.

His silence on this head can only be accounted for on the supposition that if he really belongs to this country, he is blinded to her interests by foreign influence. He ought to remember that the citizens of France have already enjoyed the sweets of this departure by treaty from the law of nations at the expense of our citizens. This happened in the case of the brig Little Sarah, on board of which was a quantity of flour belonging to citizens of Philadelphia. This flour was considered and treated as a lawful prize.

He ought also to remember that it is at best problematical whether the citizens of the United States have not more property afloat in the bottoms of the powers at war with France, than the citizens of France have afloat in bottoms of the United States, and consequently whether the balance is not in favor of France.

What is there in our history that can authorize our being degraded with the supposition that we are ignorant both of our duties and our rights?

The result of what has been shown evidently is, that the Jacobin's charge has no better foundation than that the Executive of the United States has not quarrelled with the enemies of France, for doing what by the law of nations they have a right to do.

NO JACOBIN.

NO. IV.

1793.

I have, I believe, sufficiently answered charges which the Jacobin has brought against the Executive of the United States.

In doing this, it has been shown that the claim of a right on the part of France to fit out privateers in the ports of the United States, as derived from treaty, is without foundation. As this is the basis on which it has been rested, and indeed it is the only one upon which it could rest if at all to be supported, it is not necessary, by way of answer to the Jacobin, to discuss how the claim of such a right would stand independent of treaty. But a few remarks on this point, for the information of those who may not be familiar with subjects of the kind, may not be without use.

It is a plain dictate of reason and an established principle of the law of nations, that a neutral state in any matter relating to war (not specially promised by some treaty made prior to the commencement of the war and without reference to it) cannot lawfully succor, aid, countenance, or support either of the parties at war with each other: cannot make itself, or suffer itself to be made, with its own consent, permission, or connivance, an instrument of the hostility of one party against the other, and as a consequence of these general principles cannot allow one party to prepare within its territories the means of annoying the other, or to carry on from thence against the other, with means prepared there, military expeditions of any sort by land or water.

To allow such practices is manifestly to associate with one party against the other. The state which does it ceases thereby to be a neutral state, becomes an enemy, and may be justly treated as such. In common life it is readily understood that whoever knowingly assists my enemy to injure me becomes himself, by doing so, my enemy also; and the reason being the same, the case cannot be different between nations.

Could it be necessary to enforce principles so clearly founded on common sense by authorities and precedents, it might be

done by an appeal to writers and to the general practice of nations. The following are a few of these that might be adduced: Vattel, book iii. sec. 104; Bynkershoek, Quest. Jur. Pub., lib. i. cap. 4, particularly pages 69–70 of Latin edition; Idem, cap. 8, particularly page 65 of the same edition; Leoline Jenkins, 2d vol., 728, 756; Valin, lib. iii. tit. ix. art. xiv. p. 272.

Some of these establish only the general principles, others of them go directly to the point of carrying on military expeditions from the territories of the neutral state, and even to that of fitting out privateers in the ports of such state; pronouncing the neutral state to be answerable for the consequences, and giving the party injured a right to reparation. This reparation may either be in damages, to be paid by the neutral state, or by reprisals, at the option of the party injured.

It appears from them, moreover, that on the ground of the laws of neutrality, some nations (if it be not a general usage) go so far as to exclude from remaining in their ports more than twenty-four hours (if not detained by tempest), armed vessels of one belligerent party coming within its ports with prizes made of another. It was an article of the marine ordinances of France under the former gorvernment (and it is not known to have been changed), that "no vessel taken by a captain having a foreign commission, can remain more than twenty-four hours in the ports or harbors of France, if not detained there by tempest, or if the prize has not been made of the enemies of France."

And Valin, advocate and procurator for the king at the seat of the admiralty of Rochelle, has this comment upon that article, "Plenary asylum is due only to those with whom we are not at war. To enemies we owe no more than the safety of their lives; to others we owe hospitality and good treatment, with liberty to go away when they judge proper.

"Nevertheless, as neutrality with two powers at war permits not to succor one to the prejudice of the other, to conciliate this consideration with the right of asylum, nations have tacitly agreed, and usage has made it a common law, that asylum shall be granted to foreign armed vessels with their prizes; that is to

say, if entered into a port through tempest, as long as the bad weather shall not permit them to put to sea, and for four-and-twenty hours only, if they shall have put in from any other cause.

"Thus, except the case of tempest, vessels being in a condition to make sail, there is an obligation to make them depart and return to sea after twenty-four hours, whatever danger there may be of recapture by their enemies; otherwise it would be to violate the laws of neutrality."

(See the authorities before referred to.)

The same idea which is to be found in this author, appears in the writings of Leoline Jenkins, also above referred to, who was judge of the High Court of Admiralty of England, in the reign of James II. This serves to show the extreme nicety of nations on the point of neutrality. But how much stronger the case of fitting out armed vessels in a neutral port to make prizes, than that of simply coming into and staying in it with prizes that have been made!

Another reflection occurs in relation to this point, which is this: that the government of the United States, in a matter at least of doubtful propriety, has given to France a doubtful privilege to which she was not entitled by treaty, that of selling the prizes made by her armed vessels in their ports; the treaty stipulated nothing more than a free access and egress. Let it be judged from this how far a disposition to deny France the privileges which she may claim by treaty has governed. It is true, and in that the United States must seek their justification with other powers, that writers are not agreed as to this rule with regard to prizes; some considering it as lawful to sell them in neutral ports, as may be seen, Vattel, book iii. cap. 7, sec. 232. But still it appears that the government, in a doubtful case, has followed the course which favors France. And it is questionable whether the examples of national regulations, and the opinions of a judge and a lawyer versed in the practice of courts of admiralty and more drawn to attend critically to the point of usage, ought not to have more weight than those of writers who were in a situation to have been guided more by general theory.

It appears likewise that the Regent of Sweden, who, like us, has pursued the path of neutrality in the present war, has made the point of fitting out privateers a particular article of prohibition; an example in practice which has great weight in the question. The governments of Europe know by long experience the usages of war, and without consulting the authorities or precedents, are able to pronounce with facility on what is lawful, what unlawful.

The example, then, of Sweden, is a respectable confirmation of what is the usage of nations on the point in question.

It is easy too to discern that the United States would become one of the most mischievous enemies which the maritime powers opposed to France could have, if from their territories armed vessels could be fitted out to an indefinite extent, with the full use of the means to cruise against the trade of those powers, if the prizes made by such armed vessels could be brought into their ports and sold; and if their professed neutrality could give asylum and security to these vessels and the fruits of their depredations. The inference is, that such a state of things could not possibly be long tolerated by those powers, but would lead inevitably to involving the United States in the war.

A consequence, no doubt, well understood, and unquestionably intended by the agents of France, who, with delusive professions of not desiring to embark this country in the war, are industriously employing every expedient that can tend to produce the event.

No Jacobin.

V.

August 16. 1793.

The observations hitherto made have been designed to vindicate the Executive of the United States from the aspersions cast upon it by the Jacobin. Let us now examine what has been the conduct of the agents of France.

Mr. Genet, charged with the commission of Minister Plenipotentiary from the French Republic to the United States, arrived first at Charleston, South Carolina. Instead of coming immediately on to the seat of government, as in propriety he ought to have done, he continued at that place and on the road so long as to excite no small degree of observation and surprise. Here, at once, the system of electrifying the people (to use a favorite phrase of the agents of France) began to be put in execution. Discerning men saw, from this first opening of the scene, what was to be the progress of the drama. They perceived that negotiation with the constitutional organs of the nation was not the only means to be relied upon for carrying the points with which the Representative of France was charged — that popular intrigue was at least to second, if not to enforce, the efforts of negotiation.

During the stay of Mr. Genet at Charleston, without a possibility of sounding or knowing the disposition of our government on the point, he causes to be fitted out two privateers, under French colors, and commissions to cruise from our ports against the enemies of France. Citizens of the United States are engaged to serve on board these privateers, contrary to the natural duties of humanity between nations at peace, and contrary to the positive stipulations of our treaties with some of the powers at war with France. One of these privateers makes a prize of an English vessel, brings her into the port of Charleston, where a Consul of France proceeds to try, condemn, and sell her; unwarranted by usage, by treaty, by precedent, by permission. It is impossible for a conduct less friendly or less respectful than this to have been observed. To direct violations of our sovereignty, amounting to a serious aggression, was added a dangerous commitment of our peace, without even the ceremony of previously feeling the pulse of our government. The incidents that attended Mr. Genet's arrival here, previous to his reception, though justly subject to criticism, shall be passed over in silence. Breaches of decorum lose their importance when mingled with injuries and outrages.

This offensive commencement of his career was not made an

objection to his reception; though it would probably have been so in any other country in the world. It has not been alleged either that there was any want of cordiality in that reception. We shall see what return was made for this manifestation of moderation and friendship. Knowing, as we do, the opposition of the government to the prevention of fitting out privateers in our ports, it cannot be doubted that an early opportunity was taken to make known its disapprobation to the French Minister; nor is it possible that the Executive of the United States can have neglected to remonstrate against so improper an exercise of Consular jurisdiction as that which has been mentioned; yet we have seen that the practice of fitting out privateers has been openly persisted in. Their number has so increased, and their depredations have been so multiplied, as to give just cause of alarm for the consequences to the peace of this country. It is also matter of notoriety that the Consuls of France have gone on with the condemnation of prizes; that one of them has had the audacity, by a formal protest to the District Court of New-York, not only to deny its jurisdiction, but to arrogate to himself a complete and exclusive jurisdiction over the case.

The aggravating circumstances which attended the fitting out the Little Democrat at this port, under the very nose of the government; the means which were used to obtain a suspension of her progress until the return of the President to the seat of government; the refusal which those overtures met with; the intemperate and menacing declarations which they produced on the part of the French Minister—have been the subject of general conversation.

How much more there is in the case; what further contempt of the government may have succeeded the return of the President, can only be matter of conjecture. We know, however, that the Little Democrat proceeded to sea; and we conclude, from the known consistency of our Chief Magistrate, that this could not have been with his consent.

Prosecutions have been instituted, and carried on, against some of our citizens for entering into the service of France. It is known that Mr. Genet has publicly espoused and patronized the

practice, even, as it is asserted without contradiction, to the feeing of counsel for carrying on the defence of the guilty; and we see, but a few days since, an advertisement from the Consul of France at Philadelphia, inviting to enter into her service, not only her own citizens but all friends to liberty, including of course the citizens of the United States.

We read of cases in which one nation has raised men for military service in the dominions of another, with the consent of the nation in whose territories they were raised; but the raising of men, not only without the consent but against the will of the government of the country in which they are raised; is a novelty reserved for the present day, to display the height of arrogance on one side and the depth of humiliation on the other. This is but a part of the picture.*

No Jacobin.

REPLY OF WASHINGTON.

Draft by Hamilton.

To Nicholas Cruger, Esq., Chairman of a Meeting of the Citizens of New-York,

1793.

Sir:

Your letter, conveying to me the resolutions of the citizens of New-York at their late meeting, affords me much satisfaction.

The approving voice of my fellow-citizens can never be heard by me with indifference. That of the inhabitants of your respectable metropolis must always give particular pleasure. An unanimity so perfect as appears to have prevailed among them upon an occasion so interesting to our national peace and happiness, furnishes an example of good sense, moderation, and patriotic virtue, which cannot cease to be remembered to their honor. Discerning in it a sure pledge of their firm and perse-

* Hamilton being ill with the yellow fever, these essays were not continued.

vering support, I request you to make known to them the high sense I entertain of the dispositions they have manifested, and the complete reliance I place upon those dispositions.

I cannot omit the opportunity of publicly uniting with them in acknowledging the prompt and decided co-operation of the Governor of New-York, towards the support of the neutrality of our country. The disposition hitherto shown by the Chief Magistrates of the several States in relation to this point, is a pleasing evidence of a spirit of concern for the general good, happily calculated to harmonize and invigorate all the parts of our political system.

GEORGE WASHINGTON.

AMERICANUS.

I.

February 1, 1794.

The two following papers were prepared some time since, but from particular circumstances have been postponed. The fresh appearances of a covert design to embark the United States in the war, induce their publication at this time.

An examination into the question how far *regard to the cause of Liberty* ought to induce the United States to take part with France in the present war, is rendered necessary by the efforts which are making to establish an opinion, that it ought to have that effect. In order to a right judgment on the point, it is requisite to consider the question under two aspects.

I. Whether the cause of France be truly the cause of Liberty, pursued with justice and humanity, and in a manner likely to crown it with honorable success.

II. Whether the degree of service we could render, by partici-

pating in the conflict, was likely to compensate, by its utility to the cause, the evils which would probably flow from it to ourselves.

If either of these questions can be answered in the negative, it will result, that the consideration which has been stated ought not to embark us in the war.

A discussion of the first point will not be entered upon. It would involve an examination too complicated for the compass of these papers; and, after all, the subject gives so great scope to opinion, to imagination, to feeling, that little could be expected from argument. The great leading facts are before the public; and by this time most men have drawn their conclusions so firmly, that the issue alone can adjust their differences of opinion. There was a time when all men in this country entertained the same favorable view of the French revolution. At the present time, they all still unite in the wish, that the troubles of France may terminate in the establishment of a free and good government; and dispassionate, well-informed men must equally unite in the doubt whether this be likely to take place under the auspices of those who now govern the affairs of that country. But agreeing in these two points, there is a great and serious diversity of opinion as to the real merits and probable issue of the French revolution.

None can deny, that the cause of France has been stained by excesses and extravagances, for which it is not easy, if possible, to find a parallel in the history of human affairs, and from which reason and humanity recoil. Yet many find apologies and extenuations with which they satisfy themselves; they still see in the cause of France, the cause of liberty; they are still sanguine in the hope, that it will be crowned with success; that the French nation will establish for themselves not only a free, but a republican government, capable of promoting solidly their happiness. Others, on the contrary, discern no adequate apology for the horrid and disgusting scenes, which have been and continue to be acted. They conceive, that the excesses which have been committed, transcend greatly the measure of those which, with every due allowance for circumstances, were reasonably to have been expected. They perceive in them proofs of atrocious depravity

in the most influential leaders of the revolution. They observe that among these, a MARAT* and a ROBERTSPIERRE, assassins still reeking with the blood of their fellow-citizens, monsters who outdo the fabled enormities of a *Busiris* and a *Procrustes*, are predominant in influence as well as iniquity. They find every where marks of an unexampled dissolution of all the social and moral ties. They see nowhere any thing but principles and opinions so wild, so extreme, passions so turbulent, so tempestuous, as almost to forbid the hope of agreement in any rational or well-organized system of government. They conclude that a state of things like this is calculated to extend disgust and disaffection throughout the nation, to nourish more and more a spirit of insurrection and mutiny; facilitating the progress of the invading armies, and exciting in the bowels of France commotions, of which it is impossible to compute the mischief, the duration, or the end: that if by the energy of the national character, and the intrinsic difficulty of the enterprise, the enemies of France shall be compelled to leave her to herself, this era may only prove the commencement of greater misfortunes: that after wading through seas of blood, in a furious and sanguinary civil war, France may find herself at length the slave of some victorious Sylla, or Marius, or Cæsar: and they draw this afflicting inference from the whole view of the subject, that there is more reason to fear, that the CAUSE OF TRUE LIBERTY has received a deep wound in the mismanagements of it, by those who, unfortunately for the French nation, have for a considerable time past maintained an ascendant in its affairs, than to regard the revolution of France in the form it has lately worn, as entitled to the honors due to that sacred and all important cause; or as a safe bark in which to freight the fortunes, the liberties, and the reputation of this now respectable and happy land.

Without undertaking to determine which of these opposite opinions rests most firmly on the basis of facts, I shall content myself with observing, that if the latter is conceived to have but

* This man has lately met a fate, which, though the essential interests of society will not permit us to approve, loses its odium in the contemplation of the character.

a tolerable foundation, it is conclusive against the propriety of our engaging in the war, merely through regard for the cause of Liberty. For when we resolve to put so vast a stake upon the chance of the die, we ought at least to be certain that the object for which we hazard is genuine, is substantial, is real!

Let us then proceed to the discussion of the second question. To judge of the degree of aid which we could afford to France in her present struggle, it may be of use to take a brief view of the means with which we carried on the war, that accomplished our own revolution.

Our supplies were derived from six sources. 1st, paper money; 2d, domestic loans; 3d, foreign loans; 4th, pecuniary taxes, 5th, taxes in specific articles; 6th, military impress.

The first of these resources, with a view to a future war, may be put out of the question. Past experience would forbid its being again successfully employed, and no friend to the morals, property, or industry of the people, to public or private credit, would desire to see it revived.

The second would exist, but probably in a more limited extent. The circumstance of a depreciating paper, which the holders were glad, as they supposed, to realize, was a considerable motive to the loans obtained during the late war. The magnitude of them, however, even then, forms a small proportion to the aggregate expense.

The third resource would be equally out of the question with the first. The principal lending powers would be our enemies, as they are now those of France.

The three remaining items—pecuniary taxes—taxes on specific articles—military impress, could be employed again in a future war, and are the resources upon which we should have chiefly to rely; for the resource of domestic loans, though valuable, is not a very extensive one, in a community where capitals are so moderate as in ours.

Though it is not to be doubted, that the people of the United States would hereafter, as heretofore, throw their whole property into a common stock for their common defence against internal invasion, or an unprovoked attack—who is there sanguine

enough to believe, that large contributions of any kind, could be extracted from them to carry on an external war, voluntarily undertaken for a foreign and speculative purpose?

The expectation were an illusion. Those who may entertain it ought to pause and reflect, whatever enthusiasm might have been infused into a part of the community would quickly yield to more just and sober ideas, inculcated by experience of the burthens and calamities of war. The circuitous logic by which it is attempted to be maintained, that a participation in the war is necessary to the security of our own liberty, would then appear as it truly is, a mere delusion, propagated by bribed incendiaries, or hair-brained enthusiasts; and the authors of the delusion would not fail to be execrated as the enemies of the public weal.

The business would move on heavily in its progress, as it was in its origin impolitic, while the faculty of the government to obtain pecuniary supplies, would, in the case supposed, be circumscribed within a narrow compass; levies of men would not be likely to be more successful. No one would think of detaching the militia for distant expeditions abroad; and the experience we have had in our Indian enterprises, do not authorize strong expectations of going far by voluntary enlistments, where the question is not, as it was during the last war, the defence of the fundamental rights and essential interests of the whole community. The severe expedient of drafting from the militia, a principal reliance in that war, would put the authority of government in the case to a very critical test.

This summary view of what would be our situation and prospects, is alone sufficient to demonstrate the general position, that our ability to promote the cause of France, by external exertions, could not be such as to be very material to the event.

Let us, however, for more complete elucidation, inquire to what particular objects they could be directed.

Fleets we have not, and could not have, in time, or to an extent, to be of use in the contest.

Shall we raise an army and send it to France? she does not want soldiers. Her own population can amply furnish her armies.

The number we could send, if we could get them there at all, would be of no weight in the scale.

The true wants of France are of system, order, money, provisions, arms, military stores.

System and order we could not give her by engaging in the war. The supply of money in that event would be out of our power. At present we can pay our debt to her in proportion as it becomes due. Then we could not do this—provision and other supplies, as far as we are in condition to furnish them, could not be furnished at all. The conveyance of them would become more difficult—and the forces we should be obliged ourselves to raise, would consume our surplus.

Abandoning then, as of necessity we must, the idea of aiding France in Europe, shall we turn our attention to the succor of her islands? Alas! we should probably have here only to combat their own internal disorders, to aid Frenchmen against Frenchmen,—whites against blacks, or blacks against whites! If we may judge from the past conduct of the powers at war with France, their effort is immediately against herself;—her islands are not, in the first instance, a serious object. But grant, as it is not unlikely, that they become so, is it evident that we can cooperate efficaciously to their preservation; or if we can, what will this have to do with the preservation of French liberty? The dangers to this arise from the invasion of foreign armies, carried into the bosom of France—from the still more formidable assault of civil dissension and the spirit of anarchy.

Shall we attack the islands of the powers opposed to France?

How shall we without a competent fleet carry on the necessary expeditions for the purpose? Where is such a fleet? How shall we maintain our conquests after they are made? What influence could the capture of an island or two have upon the general issue of the contest? These questions answer themselves—or shall we endeavor to make a diversion in favor of France, by attacking Canada on the one side and Florida on the other?

This certainly would be the most, indeed the only eligible

mode of aiding France in war, these enterprises may be considered as within the compass of our means.

But while this is admitted, it ought not to be regarded as a very easy task. The reduction of the countries in question ought not to be undertaken without considerable forces, for reinforcements could be brought to both those countries from the West India possessions of their respective sovereigns; relying on their naval superiority, they could spare from the islands all the troops which were not necessary for the preservation of their internal tranquillity.

These armies are then to be raised and equipped, and to be provided with all the requisite apparatus for operation. Proportionate magazines are to be formed for their accommodation and supply.

Some men, whose fate it is to think loosely, may imagine that a more summary substitute could be found in the militia. But the militia, an excellent auxiliary for internal defence, could not be advantageously employed in distant expeditions, requiring time and perseverance. For these, men regularly engaged for a competent period, are indispensable. The conquest of Canada, at least, may with reason be regarded as out of the reach of a militia operation.

If war was resolved upon, the very preparation of the means for the enterprises which have been mentioned would demand not less than a year; before this period was elapsed, the fate of France, as far as foreign invasion is concerned, would be decided. It would be manifest, either that she could or could not be subjugated by force of external coertion. Our interposition would be too late to benefit her. It appears morally certain, that the war against France cannot be of much duration. The exertions are too mighty to be long protracted.

The only way, on which the enterprises in question could serve the cause of France, would be by making a diversion of a part of those forces, which would otherwise be directed against her. But this consequence could not be counted upon. It would be known, that we could not be very early ready to attack with effect, and it would be an obvious policy to risk secondary objects

rather than be diverted from the efficacious pursuit of the main one. It would be natural in such case to rely for indemnification on the successful result of the war in Europe. The governments concerned imagine that they have too much at stake upon that result, not to hazard considerably elsewhere, in order to secure the fairest chance of its being favorable to their wishes.

It would not probably render the matter better, to precipitate our measures for the sake of a more speedy impulse. The parties ought in such case to count upon the abortion of our attempts from their immaturity, and to rely the more confidently upon the means of resistance already on the spot. Indeed, that very precipitation would leave no other option.

We could not therefore flatter ourselves that the expedient last proposed—that of attacking the possessions of Great Britain and Spain in our neighborhood, would be materially serviceable to the cause of France.

But to give the argument its fairest course, I shall take notice of two particulars in respect to which our interference would be more sensibly felt. These are the depredations which our privateers might make upon the commerce of the maritime enemies of France, and what is of far greater consequence, the direct injury which would accrue to that of Great Britain from the interruption of intercourse between the two countries, considering the shock lately sustained by mercantile credit in that country—the real importance to it of our imports from thence, and our exports thither—the large sums which are due, and in a continual course of remittance from our merchants—a war between the United States and Great Britain could not fail to be seriously distressing to her.

Yet it would be weak to calculate upon a very decisive influence of these circumstances. The public credit of Great Britain has still energy sufficient to enable her to struggle with much partial derangement. Her private credit, manifestly disordered by temporary causes, and propped as it has been by the public purse, seems to have recovered in a great degree, its impaired tone. Her commerce, too suddenly interrupted by the breaking out of the war, may be presumed to have resumed its

wonted channels, in proportion as the progress of her naval preparations has tended to give it protection, and though the being at war with us would be very far from a matter of indifference either to her commerce or to her credit, yet it is not likely that it would arrest her career, or overrule those paramount considerations which brought her into her present situation.

When we recollect how she maintained herself under a privation of our commerce, through a seven years' war with us, united for certain periods of it with France, Spain, and Holland, though we perceive a material difference between her present and her then situation, arising from that very effort, yet we cannot reasonably doubt that she would be able, notwithstanding a similar privation, to continue a war, which in fact does not call for an equal exertion on her part, as long as the other powers with which she is associated shall be in condition to prosecute it with a hope of success; nor is it probable, whatever may be the form or manner of the engagement, that Great Britain could, if disposed to peace, honorably make a separate retreat. It is the interest of all parties in such cases, to assure to each other a co-operation; and it is presumable, that this has taken place in some shape or other between the powers at present combined against France.*

The conclusion from the several considerations which have been presented, carefully and dispassionately weighed, is this, that there is no probable prospect of this country rendering material service to the cause of France, by engaging with her in the war.

It has been very truly observed in the course of the publications on the subject, *that if France is not in some way or other wanting to herself, she will not stand in need of our assistance; and if she is, our assistance cannot save her.*

AMERICANUS.

* The treaties between Great Britain, Spain, Russia, and Prussia, which since writing the above have made their appearance, confirm what is here conjectured.

NO. II.

February 8th, 1794.

Let us now turn to the other side of the medal; to be struck with it, it is not necessary to exaggerate.

All who are not willfully blind must see and acknowledge, that this country at present enjoys an unexampled state of prosperity. That war would interrupt it need not be affirmed. We should then by war lose the advantage of that astonishing progress in strength, wealth, and improvement, which we are now making, and which, if continued for a few years, will place our national rights and interests upon immovable foundations. This loss alone would be of infinite moment: it is such a one as no prudent or good man would encounter but for some clear necessity or some positive duty. If, while Europe is exhausting herself in a destructive war, this country can maintain its peace, the issue will open to us a wide field of advantages, which even imagination can with difficulty compass.

But a check to the progress of our prosperity is not the greatest evil to be anticipated. Considering the naval superiority of the enemies of France, we cannot doubt that our commerce would in a very great degree be annihilated by a war. Our agriculture would of course with our commerce receive a deep wound. The exportations which now continue to animate it could not fail to be essentially diminished. Our mechanics would experience their full share of the common calamity. That lively and profitable industry, which now spreads a smile over all of our cities and towns, would feel an instantaneous and rapid decay.

Nine-tenths of our present revenues are derived from commercial duties. Their declension must of course keep pace with that of the trade. A substitute cannot be found in other sources of taxation, without imposing heavy burthens on the people. To support public credit and carry on the war would suppose exactions really grievous. To abandon public credit would be to renounce an important mean of carrying on the war; besides

the sacrifice of the public creditors and the disgrace of a national bankruptcy.

We will not call in the aid of savage butcheries and depredations to heighten the picture. 'Tis enough to say, that a general Indian war, excited by the united influence of Britain and Spain, would not fail to spread desolation throughout our frontier.

To a people who have so recently and so severely felt the evils of war, little more is necessary than to appeal to their own recollection, for their magnitude and extent.

The war which now rages is, and for obvious reasons is likely to continue to be, carried on with unusual animosity and rancor. It is highly probable that the resentment of the combined powers against us, if we should take part in it, would be, if possible, still more violent than it is against France. Our interference would be regarded as altogether officious and wanton. How far this idea might lead to the aggravation of the ordinary calamities of war, would deserve serious reflection.

The certain evils of our joining France in the war, are sufficient dissuasives from so intemperate a measure. The possible ones are of a nature to call for all our caution, all our prudence.

To defend its own rights, to vindicate its own honor, there are occasions when a nation ought to hazard even its existence. Should such an occasion occur, I trust those who are most averse to commit the peace of the country, will not be the last to face the danger, nor the first to turn their backs upon it.

But let us at least have the consolation of not having rashly courted misfortune. Let us have to act under the animating reflection of being engaged in repelling wrongs, which we neither sought nor merited; in vindicating our rights, invaded without provocation; in defending our honor, violated without cause. Let us not have to reproach ourselves with having voluntarily bartered blessings for calamities.

But we are told that our own liberty is at stake upon the event of the war against France—that if she falls, we shall be the next victim. The combined powers, it is said, will never forgive in us the origination of those principles which were the germs of the French revolution. They will endeavor to eradicate them from the world.

If this suggestion were ever so well founded, it would perhaps be a sufficient answer to it to say, that our interference is not likely to alter the case; that it would only serve prematurely to exhaust our strength.

But other answers more conclusive present themselves.

The war against France requires, on the part of her enemies, efforts unusually violent. They are obliged to strain every nerve, to exert every resource. However it may terminate, they must find themselves spent in an extreme degree; a situation not very favorable to the undertaking a new, and even to Europe combined, an immense enterprise.

To subvert by force republican liberty in this country, nothing short of entire conquest would suffice. This conquest, with our present increased population, greatly distant as we are from Europe, would either be impracticable, or would demand such exertions, as following immediately upon those which will have been requisite to the subversion of the French revolution, would be absolutely ruinous to the undertakers.

It is against all probability that an undertaking, pernicious as this would be, even in the event of success, would be attempted against an unoffending nation, by its geographical position, little connected with the political concerns of Europe.

But impediments would arise from more special causes. Suppose France subdued, and a restoration of the monarchy in its ancient form, or a partition effected—to uphold either state of things, after the general impulse in favor of liberty which has been given to the minds of twenty-four millions of people, would in one way or another find occupation for a considerable part of the forces which had brought it about.

In the event of an unqualified restoration of the monarchy, if the future monarch did not stand in need of foreign legions for the support of his authority, still the powers which had been concerned in the restoration could not sufficiently rely upon the solidity of the order of things re-established by them, not to keep themselves in a posture to be prepared against the disturbance of it, till there had been time to compose the discordant interests and passions produced by the revolution, and bring back the

nation to ancient habits of subordination—in the event of a partition of France, it would of course give occupation to the forces of the conquerors to secure the submission of the dismembered parts.

The new dismemberment of Poland will be another obstacle to the detaching of troops from Europe for a crusade against this country—the fruits of that transaction can only be secured to Russia and Prussia by the agency of large bodies of forces, kept on foot for the purpose, within the dismembered territories.

Of the powers combined against France, there are only three whose interests have any material reference to this country; England, Spain, Holland. As to Holland, it will be readily conceded that she can have no interest or feeling to induce her to embark in so mad and wicked a project. Let us see how the matter will stand with regard to Spain and England.

The object of the enterprise against us must be, either the establishment in this country of a royal in place of our present republican government, the subjugation of the country to the dominion of one of the parties, or its division among them.

The establishment of an independent monarchy in this country would be so manifestly against the interests of both those nations, in the ordinary acceptation of this term in politics, that neither of them is at all likely to desire it.

It may be adopted as an axiom in our political calculations, that no foreign power which has valuable colonies in America, will be propitious to our remaining one people under a vigorous government.

No man, I believe, but will think it probable, however disadvantageous the change in other respects, that a monarchical government, from its superior force, would ensure more effectually than our present form, our permanent unity as a nation. This at least would be the indubitable conclusion of European calculators; from which may be confidently inferred a disinclination in England and Spain to our undergoing a change of that kind.

The only thing that can be imagined capable of reconciling either of those powers to it, would be the giving us for monarch a member of its own royal family, and forming something like a family compact.

But here would arise a direct collision of interests between them. Which of them would agree that a prince of the family of the other, should, by reigning over this country, give to that other a decided preponderancy in the scale of American affairs?

The subjugation of the United States to the dominion of those powers, would fall more strongly under a like consideration. 'Tis impossible that either of them should consent that the other should become master of this country, and neither of them without madness could desire a mastery, which would cost more than 'twas worth to maintain it, and which, from an irresistible course of things, could be but of very short duration.

The third, namely the division of it between them, is the most colorable of the three suppositions. But even this would be the excess of folly in both. The dominion of neither of them could be of any permanency, and while it lasted, would cost more than it was worth. Spain on her part could scarcely fail to be sensible that, from obvious causes, her dominion over the part which was allotted to her, would be altogether transient.

The first collision between Britain and Spain would indubitably have one of two effects, either a temporary reunion of the whole country under Great Britain, or a dismission of the yoke of both.

The latter, by far the most probable and eventually certain, would discover to both the extreme absurdity of the project. If the first step was a reunion under Great Britain, the second, and one not long deferred, would be a rejection of her authority.

The United States, rooted as are now the ideas of independence, are happily too remote from Europe to be governed by her; dominion over any part of them would be a real misfortune to any nation of that quarter of the globe.

To Great Britain, the enterprise supposed would threaten serious consequences in more ways than one. It may safely be affirmed, that she would run by it greater risks of bankruptcy and revolution, than we of subjugation. A chief proportion of the burthen would unavoidably fall upon her as the monied and principal maritime power, and it may emphatically be said, that she would make war upon her own commerce and credit. There

is the strongest ground to believe that the nation would disrelish and oppose the project. The certainty of great evils attending it, the dread of much greater, experience of the disasters of the last war, would operate upon all: many, not improbably a majority, would see in the enterprise a malignant and wanton hostility against liberty, of which they might themselves expect to be the next victim. Their judgments and their feelings would easily distinguish this case from that either of their former contest with us, or their present contest with France. In the former, they had pretensions to support which were plausible enough to mislead their pride and their interest. In the latter, there were strong circumstances to rouse their passions, alarm their fears, and induce an acquiescence in the course which was pursued.

But a future attack upon us, as is apprehended, would be so absolutely pretextless, as not to be understood. Our conduct will have been such as to entitle us to the reverse of unfriendly or hostile dispositions; while powerful motives of self-interest would advocate with them our cause.

But Britain, Spain, Austria, Prussia, and perhaps even Russia, will have more need and a stronger desire of peace and repose, to restore and recruit their wasted strength and exhausted treasures, to re-invigorate the interior order and industry of their respective kingdoms, relaxed and depressed by war, than either means or inclination to undertake so extravagant an enterprise against the liberty of this country.

If there can be any danger to us, it must arise from our voluntarily thrusting ourselves into the war. Once embarked, nations sometimes prosecute enterprises of which they would not otherwise have dreamt. The most violent resentment, as before intimated, would no doubt in such case be kindled against us, for what would be called a wanton and presumptuous intermeddling on our part; what this might produce, it is not easy to calculate.

There are two great errors in our reasoning upon this subject. One, that the combined powers will certainly attribute to us the same principles, which they deem so exceptionable in France; the other, that our principles are in fact the same.

If left to themselves, they will all, except one, naturally see in us a people who originally resorted to a revolution in government, as a refuge from encroachments on rights and privileges *antecedently* enjoyed, not as a people who from choice sought a radical and entire change in the established government, in pursuit of new privileges and rights carried to an extreme, irreconcilable perhaps with any form of regular government. They will see in us a people who have a due respect for property and personal security; who, in the midst of our revolution, abstained with exemplary moderation from every thing violent or sanguinary, instituting governments adequate to the protection of persons and property; who, since the completion of our revolution, have in a very short period, from mere reasoning and reflection, without tumult or bloodshed, adopted a form of general government calculated, as well as the nature of things would permit, to remedy antecedent defects, to give strength and security to the nation, to rest the foundations of liberty on the basis of justice, order and law; who have at all times been content to govern themselves, without intermeddling with the affairs or governments of other nations; in fine, they will see in us sincere republicans, but decided enemies to licentiousness and anarchy; sincere republicans, but decided friends to the freedom of opinion, to the order and tranquillity of all mankind. They will not see in us a people whose best passions have been misled, and whose best qualities have been perverted from their true direction by headlong, fanatical, or designing leaders, to the perpetration of acts from which humanity shrinks, to the commission of outrages over which the eye of reason weeps, to the profession and practice of principles which tend to shake the foundations of morality, to dissolve the social bands, to disturb the peace of mankind, to substitute confusion to order, anarchy to government.

Such at least is the light in which the reason or the passions of the powers confederated against France, lead them to view her principles and conduct. And it is to be lamented, that so much cause has been given for their opinions. If, on our part, we give no incitement to their passions, facts too prominent and too deci-

sive to be combated, will forbid their reason to bestow the same character upon us.

It is therefore matter of real regret, that there should be an effort on our part to level the distinctions which discriminate our case from that of France, to confound the two cases in the view of foreign powers, and to pervert or hazard our own principles by persuading ourselves of a similitude which does not exist.

Let us content ourselves with lamenting the errors which a great, a gallant, an amiable, a respectable nation has been betrayed, with uniting our wishes and our prayers, that the Supreme Ruler of the world will bring them back from those errors to a more sober and more just way of thinking and acting, and will overrule the complicated calamities which surround them, to the establishment of a government under which they may be free, secure, and happy. But let us not corrupt ourselves by false comparisons or glosses, nor shut our eyes to the true nature of transactions which ought to grieve and warn us, nor rashly mingle our destiny in the consequences of the errors and extravagancies of another nation.

AMERICANUS.

TULLY.

To the People of the United States.

I.

August 23, 1794.

It has, from the first establishment of YOUR present Constitution, been predicted, that every occasion of serious embarrassment which should occur in the affairs of the government, every misfortune which it should experience, whether produced from its own faults or mistakes, or from other causes, would be the signal of an attempt to overthrow it, or to lay the foundation of its overthrow, by defeating the exercise of constitutional and

necessary authorities. The disturbances which have recently broken out in the western counties of Pennsylvania, furnish an occasion of this sort. It remains to see whether the prediction which has been quoted proceeded from an unfounded jealousy excited by partial differences of opinion, or was a just inference from causes inherent in the structure of our political institutions. Every virtuous man, every good citizen, and especially EVERY TRUE REPUBLICAN, must fervently pray, that the issue may confound and not confirm so ill-omened a prediction.

Your firm attachment to the government YOU have established, cannot be doubted.

If a proof of this were wanting to animate the confidence of your public agents, it would be sufficient to remark, that as often as any attempt to counteract its measures appear, it is carefully prepared by strong professions of friendship to the government and disavowals of any intention to injure it. This can only result from a conviction that the government carries with it YOUR affections; and that an attack upon it, to be successful, must veil the stroke under the appearances of good will.

It is therefore very important that YOU should clearly discern, in the present instance, the shape in which a design of turning the existing insurrection to the prejudice of the government would naturally assume. Thus guarded, you will more readily discover and more easily shun the artful snares which may be laid to entangle your feelings and your judgment, and will be the less apt to be misled from the path by which alone you can give security and permanency to the blessings you enjoy, and can avoid the incalculable mischiefs incident to a subversion of the just and necessary authority of the laws.

The design alluded to, if it shall be entertained, would not appear in an open justification of the principles or conduct of the insurgents, or in a direct dissuasion from the support of the government. These methods would produce general indignation and defeat the object. It is too absurd and shocking a position to be directly maintained, that forcible resistance by a sixtieth part of the community to the representative will of the WHOLE, and to constitutional laws expressed by that will, and acquiesced

in by the people at large, is justifiable or even excusable. It is a position too untenable and disgusting to be directly advocated, that the government ought not too be supported in exertions to establish the authority of the laws against a resistance so incapable of justification or excuse.

The adversaries of good order in every country have too great a share of cunning, too exact a knowledge of the human heart, to pursue so unpromising a cause. Those among us would take upon the present occasion one far more artful, and consequently far more dangerous.

They would unite with good citizens, and perhaps be among the loudest in condemning the disorderly conduct of the insurgents. They would agree that it is utterly unjustifiable, contrary to the vital principle of republican government, and of the most dangerous tendency. But they would, at the same time, slily add, that excise laws are pernicious things, very hostile to liberty (or perhaps they might more smoothly lament that the government had been imprudent enough to pass laws so contrary to the genius of a free people), and they would still more cautiously hint that it is enough for those who disapprove of such laws to submit to them—too much to expect their aid in forcing them upon others. They would be apt to intimate further, that there is reason to believe that the Executive has been to blame, sometimes by too much forbearance, encouraging the hope that the laws would not be enforced, at other times in provoking violence by severe and irritating measures; and they would generally remark, with an affectation of moderation and prudence, that the case is to be lamented, but difficult to be remedied; that a trial of force would be delicate and dangerous; that there is no foreseeing how or where it would end; that it is perhaps better to temporize, and by mild means to allay the ferment, and afterwards to remove the cause by repealing the exceptionable laws. They would probably also propose, by anticipation of and in concert with the views of the insurgents, plans of procrastination. They would say, if force must finally be resorted to, let it not be till after Congress has been consulted, who, if they think fit to persist in continuing the laws, can make

additional provision for enforcing their execution. This, too, they would argue, will afford an opportunity for the public sense to be better known, which (if ascertained to be in favor of the laws) will give the government greater assurance of success in measures of coercion.

By these means, artfully calculated to divert YOUR attention from the true question to be decided, to combat by prejudices against a particular system, a just sense of the criminality and danger of violent resistance to the laws; to oppose the suggestion of misconduct on the part of government to the fact of misconduct on the part of the insurgents; to foster the spirit of indolence and procrastination natural to the human mind, as an obstacle to the vigor and exertion which so alarming an attack upon the fundamental principles of public and private security demands; to distract YOUR opinion on the course proper to be pursued, and consequently on the propriety of the measures which may be pursued. They would expect (I say) by these and similar means equally insidious and pernicious, to abate YOUR just indignation at the daring affront which has been offered to YOUR authority and your zeal for the maintenance and support of the laws, to prevent a competent force, if force is finally called forth, from complying with the call, and thus to leave the government of the Union in the prostrate condition of seeing the laws trampled under foot by an unprincipled combination of a small portion of the community, habitually disobedient to laws, and itself destitute of the necessary aid for vindicating their authority.

Virtuous and enlightened citizens of a new and happy country! ye could not be the dupes of artifices so detestable, of a scheme so fatal; ye cannot be insensible to the destructive conquences with which it would be pregnant; ye cannot but remember that the government is YOUR own work, that those who administer it are but your temporary agents; that you are called upon not to support their power, BUT YOUR OWN POWER. And you will not fail to do what your rights, your best interests, your character as a people, your security as members of society, conspire to demand of you.

TULLY.

II.

August 26, 1794.

It has been observed that the means most likely to be employed to turn the insurrection in the western country to the detriment of the government, would be artfully calculated among other things "to divert your attention from the true question to be decided."

Let us see then what is this question. It is plainly this—Shall the majority govern or be governed? shall the nation rule or be ruled? shall the general will prevail, or the will of a faction? shall there be government, or no government? It is impossible to deny that this is the true, and the whole question. No art, no sophistry can involve it in the least obscurity.

The Constitution *you* have ordained for yourselves and your posterity contains this express clause: "The Congress *shall have power* to lay and collect taxes, duties, imposts, and *excises*, to pay the debts, and provide for the common defence and general welfare of the United States." You have, then, by a solemn and deliberate act, the most important and sacred that a nation can perform, pronounced and decreed, that your representatives in Congress shall have power to lay *excises*. You have done nothing since to reverse or impair that decree.

Your representatives in Congress, pursuant to the commission derived from you, and with a full knowledge of the public exigencies, have laid an excise. At three succeeding sessions they have revised that act, and have as often, with a degree of unanimity not common, and after the best opportunities of knowing your sense, renewed their sanction to it, you have acquiesced in it, it has gone into general operation: and *you* have actually paid more than a million of dollars on account of it.

But the four western counties of Pennsylvania, undertake to rejudge and reverse your decrees. You have said, "The Congress *shall have power* to lay *excises*." They say, "The Congress *shall not have* this power." Or, what is equivalent—they shall not exercise it: for a *power* that may not be exercised is a nullity.

Your representatives have said, and four times repeated it, "An excise on distilled spirits *shall* be collected." They say it *shall not* be collected. We will punish, expel, and banish the officers who shall attempt the collection. We will do the same by every other person who shall dare to comply with your decree expressed in the constitutional charter; and with that of your representatives expressed in the laws. The sovereignty shall not reside with you, but with us. If you presume to dispute the point by force, we are ready to measure swords with you, and if unequal ourselves to the contest, we call in the aid of a foreign nation. We will league ourselves with a foreign power.

If there is a man among us who shall affirm that the question is not what it has been stated to be—who shall endeavor to perplex it by ill-timed declamations against excise laws—who shall strive to paralyze the efforts of the community by invectives or insinuations against the government—who shall inculcate directly, or indirectly, that force ought not to be employed to compel the insurgents to a submission to the laws, if the pending experiment to bring them to reason (an experiment which will immortalize the moderation of the government) shall fail—such a man is not a good citizen; such a man, however he may prate and babble republicanism, is not a republican; he attempts to set up the *will* of a part against the *will* of the whole, the *will* of a *faction* against the will of the *nation*, the pleasure of a *few* against *your* pleasure, the violence of a lawless combination against the sacred authority of laws pronounced under your indisputable commission.

Mark such a man, if such there be. The occasion may enable you to discriminate the *true* from *pretended republicans; your* friends from the friends of *faction*. 'Tis in vain that the latter shall attempt to conceal their pernicious principles under a crowd of odious invectives against the laws. Your answer is this: "*We* have already in the constitutional act decided the point against you, and against those for whom you apologize. *We* have pronounced that *excises* may be laid, and consequently that they are not, as you say, inconsistent with Liberty. Let our will be first obeyed, and then we shall be ready to consider the

reasons which can be afforded to prove our judgment has been erroneous: and if they convince us to cause them to be observed. We have not neglected the means of amending in a regular course the constitutional act. And we shall know how to make our sense be respected whenever we shall discover that any part of it needs correction. But as an earnest of this, it is our intention to begin by securing obedience to our authority, from those who have been bold enough to set it at defiance. In a full respect for the laws, we discern the reality of our power and the means of providing for our welfare as occasion may require; in the contempt of the laws we see the annihilation of our power; the possibility, and the danger of its being usurped by others, and of the despotism of individuals succeeding to the regular authority of the nation." That a fate like this may never await *you*, let it be deeply imprinted in your minds, and handed down to your latest posterity, that there is no road to *despotism* more sure or more to be dreaded than that which begins at anarchy.

Threats of joining the British are actually thrown out—how far the idea may go is not known.

TULLY.

III.

August 28, 1794.

If it were to be asked, What is the most sacred duty, and the greatest source of security in a Republic? the answer would be, An inviolable respect for the Constitution and Laws—the first growing out of the last. It is by this, in a great degree, that the rich and the powerful are to be restrained from enterprises against the common liberty—operated upon by the influence of a general sentiment, by their interest in the principle, and by the obstacles which the habit it produces erects against innovation and encroachment. It is by this, in a still greater degree, that caballers, intriguers, and demagogues, are prevented from climbing on the shoulders of faction to the tempting seats of usurpation and tyranny.

Were it not that it might require too long a discussion, it would not be difficult to demonstrate that a large and well-organized Republic can scarcely lose its liberty from any other cause than that of anarchy, to which a contempt of the laws is the high road.

But, without entering into so wide a field, it is sufficient to present to your view a more simple and a more obvious truth, which is this: that a sacred respect for the constitutional law is the vital principle, the sustaining energy of a free government.

Government is frequently and aptly classed under two descriptions—a government of FORCE, and a government of LAWS; the first is the definition of despotism—the last, of liberty. But how can a government of laws exist when the laws are disrespected and disobeyed? Government supposes control. It is that POWER by which individuals in society are kept from doing injury to each other, and are brought to co-operate to a common end. The instruments by which it must act are either the AUTHORITY of the laws or FORCE. If the first be destroyed, the last must be substituted; and where this becomes the ordinary instrument of government, there is an end to liberty!

Those, therefore, who preach doctrines, or set examples which undermine or subvert the authority of the laws, lead us from freedom to slavery; they incapacitate us for a GOVERNMENT of LAWS, and consequently prepare the way for one of FORCE, for mankind must have GOVERNMENT OF ONE SORT OR ANOTHER. There are, indeed, great and urgent cases where the bounds of the Constitution are manifestly transgressed, or its constitutional authorities so exercised as to produce unequivocal oppression on the community, and to render resistance justifiable. But such cases can give no color to the resistance by a comparatively inconsiderable part of a community, of constitutional laws distinguished by no extraordinary features of rigor or oppression, and acquiesced in by the body of the community.

Such a resistance is treason against society, against liberty, against every thing that ought to be dear to a free, enlightened, and prudent people. To tolerate it, were to abandon your most precious interests. Not to subdue it, were to tolerate it. Those

who openly or covertly dissuade you from exertions adequate to the occasion, are your worst enemies. They treat you either as fools or cowards, too weak to perceive your interest or your duty, or too dastardly to pursue them. They, therefore, merit and will, no doubt, meet your contempt. To the plausible but hollow harangue of such conspirators you cannot fail to reply, How long, ye Catilines, will ye abuse our patience?

To urge the execution of that system, would manifest, it is said, an intemperate spirit; and to excite your disapprobation of that course, you are threatened with the danger of a civil war, which is called the consummation of human evil.

To crown the outrage upon your understandings, the insurgents are represented as men who understand the principles of freedom, and know the horrors and distresses of anarchy, and who, therefore, must have been tempted to hostility against the laws by a RADICAL DEFECT, EITHER in the government *or* in those intrusted with its administration. How *thin* the partition which divides the insinuation from the assertion, that the government is in fault, and the insurgents in the right!

Fellow-citizens: A name, a sound has too often had influence on the affairs of nations; an EXCISE has too long been the successful watchword of party. It has even sometimes led astray well-meaning men. The experiment is now to be tried whether there be any spell in it of sufficient force to unnerve the arm which may be found necessary to be raised in defence of law and order.

The jugglers who endeavor to cheat us with the sound, have never dared to venture into the fair fields of argument. They are conscious that it is easier to declaim than to reason on the subject. They know it to be better to play a game with the passions and prejudices, than to engage seriously with the understanding of the auditory. You have already seen that the merits of excise laws are immaterial to the question to be decided—that you have prejudged the point by a solemn constitutional act, and that until you shall have revoked or modified that act, resistance to its operation is a criminal infraction of the social compact, an inversion of the fundamental principles of Republican Government, and a

daring attack upon YOUR Sovereignty,—which you are bound, by every motive of duty and self-preservation, to withstand and defeat. The matter might safely be suffered to rest here: but I shall take a future opportunity to examine the reasonableness of the prejudice which is inculcated against excise laws, and which has become the pretext for excesses tending to dissolve the bands of society.

Fellow-citizens: You are told that it will be intemperate to urge the execution of the laws which are resisted. What? Will it be indeed intemperate in your Chief Magistrate, sworn to maintain the Constitution, charged faithfully to execute the laws, and authorized to employ for that purpose force, when the ordinary means fail—will it be intemperate in him to exert that force, when the Constitution and the laws are opposed by force? Can he answer it to his conscience, to you, not to exert it?

Yes, it is said; because the execution of it will produce civil war—the consummation of human evil.

Fellow-citizens: Civil war is, undoubtedly, a great evil. It is one that every good man would wish to avoid, and will deplore if inevitable. But it is incomparably a less evil than the destruction of Government. The first brings with it serious but temporary and partial ills: the last undermines the foundations of our security and happiness; and where should we be if it were once to grow into a maxim, that force is not to be used against the seditious combinations of parts of the community to resist the laws? This would be to give a CARTE BLANCHE to ambition, to licentiousness, to foreign intrigue, to make you the prey of the gold of other nations—the sport of the passions and vices of individuals among yourselves. The hydra Anarchy would rear its head in every quarter. The goodly fabric you have established would be rent asunder, and precipitated into the dust. You knew how to encounter civil war rather than surrender your liberty to foreign domination; you will not hesitate now to brave it rather than to surrender your sovereignty to the tyranny of a faction; you will be as deaf to the apostles of anarchy now as you were to the emissaries of despotism then. Your love of liberty will guide you now as it did then; you know that the POWER of the major-

ity and LIBERTY are inseparable. Destroy that, and this perishes. But, in truth, that which properly can be called civil war is not to be apprehended—unless from the act of those who endeavor to fan the flame, by rendering the Government odious. A civil war is a contest between two GREAT parts of the same empire. The exertion of the strength of the nation to suppress resistance to its laws, by a sixtieth part of itself, is not of that description.

After endeavoring to alarm you with the horrors of civil war, an attempt is made to excite your sympathy in favor of the armed faction, by telling you that those who compose it are men who understand the principles of freedom, and know the horrors and distresses of anarchy, and must therefore have been prompted to hostility against the laws by a radical defect EITHER in the government OR in its administration. Fellow-citizens, for an answer to this you have only to consult your senses. The natural consequences of radical defect in a government, or in its administration, are national distress and suffering. Look around you—where is it? Do you feel it? Do you see it?

Go in quest of it beyond the Alleghany, and instead of it you will find that there also a scene of unparalleled prosperity upbraids the ingratitude and madness of those who are endeavoring to cloud the bright face of our political horizon, and to mar the happiest lot that beneficent Heaven ever indulged to undeserving mortals.

When you have turned your eyes towards that scene, examine well the men whose knowledge of the principles of freedom is so emphatically vaunted—where did they get their better knowledge of those principles than that which you possess? How is it that you have been so blind or tame as to remain quiet, while they have been goaded into hostility against the laws by a RADICAL DEFECT in the government or its administration? Are you willing to yield them the palm of discernment, of patriotism, or of courage?

TULLY.

IV.

Sept. 2, 1794.

The prediction mentioned in my first letter begins to be fulfilled. Fresh symptoms every moment appear of a dark conspiracy, hostile to your government, to your peace abroad, to your tranquillity at home. One of its orators dares to prostitute the name of FRANKLIN, by annexing it to a publication as insidious as it is incendiary. Aware of the folly and the danger of a direct advocacy of the cause of the insurgents, he makes the impudent attempt to enlist your passions in their favor by false and virulent railings against those who have heretofore represented you in Congress. The foreground of the piece presented you with a bitter invective against that wise, moderate, and pacific policy, which in all probability will rescue you from the calamities of a foreign war, with an increase of new dignity and with additional lustre to the American name and character. Your representatives are delineated as corrupt, pusillanimous, and unworthy of your confidence; because they did not plunge headlong into measures which might have rendered war inevitable; because they contented themselves with preparing for it, instead of making it, leaving the path open to the Executive for one last and solemn effort of negotiation; because they did not display either the promptness of gladiators, or the blustering of bullies, but assumed that firm, yet temperate attitude, which alone is suited to the representatives of a brave but rational people; who deprecated war, though they did not fear it; and who have a great and solid interest in peace, which ought only to be abandoned when it is unequivocally ascertained that the sacrifice is absolutely due to the vindication of their honor and the preservation of their essential rights; because, in fine, your representatives wished to give an example to the world, that the boasted moderation of republican governments was not (like the patriotism of our political barkers) an empty declaration, but a precious reality.

The sallies of a momentary sensibility, roused and stung by

injury, were excusable. It was not wonderful, that the events of war were under the first impressions heard from good and prudent men. But to revive them at this late hour, when fact and reflection unite to condemn them; to arraign a conduct which has elevated the national character to the highest point of true glory; to hope to embark you in the condemnation of that conduct, and to make your indignation against it useful to the cause of insurrection and treason, are indications of a wrong-headedness, perverseness, or profligacy, for which it is not easy to find terms of adequate reprobation.

Happily the plotters of mischief knew ye not. They derive what they mistake for your image from an original in their own heated and crooked imaginations, and they hope to mould a wise, reflecting, and dispassionate people to purposes which presuppose an ignorant, unthinking, and turbulent herd.

But the declamation against your representatives for their love of peace, is but the preface to the main design. That design is to alienate you from the support of the laws, by the spectre of an odious excise system, baneful to liberty, engendered by corruption, and nurtured by the INSTRUMENTALITY (favored word, fruitful source of mountebank wit) of the enemies of freedom.

TULLY.

HORATIUS.

To the People of the United States.

May, 1795.

COUNTRYMEN AND FELLOW-CITIZENS:

Nothing can be more false or ridiculous, justly considered, than the assertion that great sacrifices of your interests are made in the treaty with Great Britain.

As to the controverted points between the two nations, the treaty provides satisfactorily for the great and essential ones; and only foregoes objects of an inferior and disputable nature, of

no real consequence to the permanent welfare of the country. As to trade, the dilemma is this: if an article is added for granting us such privileges in the British West Indies, as are satisfactory to us, it will give a duration of TWELVE years to the treaty, and will render it as good a one as the most sanguine could desire, and a better one than any other power of Europe *can* make with us; for no other power in Europe can give us the advantages in the East Indies, which this treaty confers.

If that article be not added, the commercial part of the treaty will expire in TWO years after the present war, by its own limitation.

It is therefore preposterous to talk of great sacrifices in a commercial sense. This observation is to be understood with the exception of the third article; which regulates the trade between us and the neighboring British territories, which is permanent, and which is certainly a precious article; inevitably throwing into our lap the greatest part of the fur trade, with the trade of the two *Canadas*. This is a full answer to the idle tale of sacrifices by the treaty, as the pretext for violating your Constitution, and for sullying your faith and your honor.

It is an unquestionable truth, fellow-citizens, one which it is essential you should understand, that the great and cardinal *sin* of the treaty in the eyes of its adversaries is, that it puts an end to controversy with Great Britain.

We have a sect of politicians among us, who, influenced by a servile and degrading subserviency to the views of France, have adopted it as a fundamental tenet, that there ought to subsist between us and Great Britain, eternal variance and discord.

What we now see is a part of the same system which led the ministry of Louis the XVIth to advise our commissioners for making peace to treat with Great Britain without the acknowledgment of our independence; wishing that the omission of this acknowledgment might perpetuate a jealousy and dread of Great Britain, and occasion a greater necessity for our future dependence on France.

It is a part of the same system, which, during our war with Great Britain, produced a resolution of our public councils, with-

out adequate motive or equivalent, to sacrifice the navigation of the Mississippi to Spain; and which also begat a disposition to abandon our claim to any equal participation in the cod-fisheries.

It is a part of the same disgraceful system which fettered our commissioners for making peace with the impolitic and humiliating instruction to submit all their motions to the direction of the French Cabinet, and which attempted a censure upon them for breaking through that system, and in consequence of it effecting a peace, glorious and advantageous for this country beyond expectation.

The present rulers of France proclaimed to the world the insidious and unfriendly policy of the former government towards this country. Their successors may hereafter unmask equally insidious and unfriendly views in the present rulers.

But if you are as discerning as I believe you to be, you will not wait for this evidence to form your opinion. You will see in the conduct of the agents of that government, wherever they are, that they are machinating against your independence, peace, and happiness;—that not content with a fair competition in your trade, on terms of equal privilege, they are laboring to continue you at variance with Great Britain, in order that you may be dependent on France.

This conduct in the known agents of a foreign government is not to be wondered at. It marks the usual and immemorial policy of all the governments of Europe.

But, that any of your countrymen, that men who have been honored with your suffrages, should be the supple instruments of this crooked policy, that they should stoop to nourish and foster this exotic plant, and should exchange the pure and holy love of their own country for a meretricious foreign amour—that they should be willing to sacrifice your interests to their animosity against one foreign nation, and their devotion for another, is justly matter of surprise and indignation. No terms of reprobation are too severe for so faithless and so unworthy a conduct.

Reason, religion, philosophy, policy, disavow the spurious and odious doctrine, that we ought to cherish and cultivate enmity with any nation whatever.

In reference to a nation with whom we have such extensive relations of commerce as with Great Britain—to a power so capable, from her maritime strength, of annoying us—it must be the offspring of treachery or extreme folly. If you consult your true interest, your motto cannot fail to be, "PEACE and TRADE with ALL NATIONS—beyond our present engagements, POLITICAL CONNECTION with NONE." You ought to spurn from you, as the box of Pandora, the fatal heresy of a close alliance, or in the language of *Genet*, a true *family compact* with France. This would at once make you a mere satellite of France, and entangle you in all the contests, broils and wars of Europe.

'Tis evident that the controversies of Europe must often grow out of causes and interests foreign to this country. Why then should we, by a close political connection with any power of Europe, expose our peace and interest, as a matter of course, to all the shocks with which their mad rivalship and wicked ambition so frequently convulse the earth? 'Twere insanity to embrace such a system. The avowed and secret partisans of it merit our contempt for their folly, or our execration for their depravity.

HORATIUS.

CAMILLUS.

DEFENCE OF MR. JAY'S TREATY.

NO. I.

July 22, 1795.

It was to have been foreseen, that the treaty which Mr. Jay was charged to negotiate with Great Britain, whenever it should appear, would have to contend with many perverse dispositions, and some honest prejudices; that there was no measure in which the government could engage, so little likely to be viewed according to its intrinsic merits—so very likely to encounter misconception, jealousy, and unreasonable dislike. For this, many reasons may be assigned.

It is only to know the vanity and vindictiveness of human nature, to be convinced, that while this generation lasts, there will always exist among us, men irreconcilable to our present national Constitution; embittered in their animosity in proportion to the success of its operations, and the disappointment of their inauspicious predictions. It is a material inference from this, that such men will watch, with lynx's eyes, for opportunities of discrediting the proceedings of the government, and will display a hostile and malignant zeal upon every occasion, where they think there are any prepossessions of the community to favor their enterprises. A treaty with Great Britain was too fruitful an occasion not to call forth all their activity.

It is only to consult the history of nations, to perceive, that every country, at all times, is cursed by the existence of men, who, actuated by an irregular ambition, scruple nothing which they imagine will contribute to their own advancement and importance: in monarchies, supple courtiers; in republics, fawning or turbulent demagogues, worshipping still the idol, power, wherever placed, whether in the hands of a prince or of the people, and trafficking in the weaknesses, vices, frailties, or prejudices of the one or the other. It was to have been expected, that such men, counting more on the passions than on the reason of their fellow-citizens, and anticipating that the treaty would have to struggle with prejudices, would be disposed to make an alliance with popular discontent, to nourish it, and to press it into the service of their particular views.

It was not to have been doubted, that there would be one or more foreign powers, indisposed to a measure which accommodated our differences with Great Britain, and laid the foundation of future good understanding, merely because it had that effect.

Nations are never content to confine their rivalships and enmities to themselves. It is their usual policy, to disseminate them as widely as they can, regardless how far it may interfere with the tranquillity or happiness of the nations which they are able to influence.—Whatever pretensions may be made, the world is yet remote from the spectacle of that just and generous policy, whether in the cabinets of republics or of kings, which would

dispose one nation, in its intercourses with another—satisfied with a due proportion of privileges and benefits—to see that other pursue freely, its true interest with regard to a third; though at the expense of no engagement, nor in violation of any rule of friendly or fair procedure. It was natural, that the contrary spirit should produce efforts of foreign counteraction to the treaty; and it was certain that the partisans of the counteracting power would second its efforts by all the means which they thought calculated to answer the end.

It was known, that the resentment produced by our revolution war with Great Britain, had never been entirely extinguished, and that recent injuries had rekindled the flame with additional violence. It was a natural consequence of this, that many should be disinclined to any amicable arrangement with Great Britain, and that many others should be prepared to acquiesce only in a treaty which should present advantages of so striking and preponderant a kind, as it was not reasonable to expect could be obtained, unless the United States were in a condition to give the law to Great Britain, and as, if obtained under the coercion of such a situation, could only have been the short-lived prelude of a speedy rupture to get rid of them.

Unfortunately, too, the supposition of that situation has served to foster exaggerated expectations; and the absurd delusion to this moment prevails, notwithstanding the plain evidence to the contrary, which is deducible from the high and haughty ground still maintained by Great Britain against victorious France.

It was not to be mistaken, that an enthusiasm for France and her revolution, throughout all its wonderful vicissitudes, has continued to possess the minds of the great body of the people of this country; and it was to be inferred, that this sentiment would predispose to a jealousy of any agreement or treaty with her most persevering competitor—a jealousy so excessive, as would give the fullest scope to insidious arts to perplex and mislead the public opinion. It was well understood, that a numerous party among us, though disavowing the design, because the avowal would defeat it, have been steadily endeavoring to make

the United States a party in the present European war, by advocating all those measures which would widen the breach between us and Great Britain, and by resisting all those which would tend to close it; and it was morally certain, that this party would eagerly improve every circumstance which could serve to render the treaty odious, and to frustrate it, as the most effectual road to their favorite goal.

It was also known beforehand, that personal and party rivalships, of the most active kind, would assail whatever treaty might be made, to disgrace, if possible, its organ.

There are three persons prominent in the public eye, as the successor of the actual President of the United States, in the event of his retreat from the station, Mr. Adams, Mr. Jay, and Mr. Jefferson.

No one has forgotten the systematic pains which have been taken to impair the well-earned popularity of the first gentleman. Mr. Jay, too, has been repeatedly the object of attacks with the same view. His friends, as well as his enemies, anticipated that he could make no treaty which would not furnish weapons against him: and it were to have been ignorant of the indefatigable malice of his adversaries, to have doubted that they would be seized with eagerness and wielded with dexterity.

The peculiar circumstances which have attended the two last elections for governor of this State,* have been of a nature to give the utmost keenness to party animosity. It was impossible that Mr. Jay should be forgiven for his double, and, in the last instance, triumphant success; or that any promising opportunity of detaching from him the public confidence, should pass unimproved.

Trivial facts frequently throw light upon important designs. It is remarkable, that in the toasts given on the 4th of July, wherever there appears a direct or indirect censure of the treaty, it is pretty uniformly coupled with compliments to Mr. Jefferson, and to our late governor, Mr. Clinton, with an evident design to place those gentlemen in contrast with Mr. Jay, and, decrying

* New-York.

him, to elevate them. No one can be blind to the finger of party spirit, visible in these and similar transactions. It indicates to us clearly, one powerful source of opposition to the treaty.

No man is without his personal enemies. Pre-eminence even in talents and virtue is a cause of envy and hatred of its possessor. Bad men are the natural enemies of virtuous men. Good men sometimes mistake and dislike each other.

Upon such an occasion as the treaty, how could it happen otherwise, than that *personal enmity* would be unusually busy, enterprising, and malignant?

From the combined operations of these different causes, it would have been a vain expectation that the treaty would be generally contemplated with candor and moderation, or that reason would regulate the first impressions concerning it. It was certain, on the contrary, that however unexceptionable its true character might be, it would have to fight its way through a mass of unreasonable opposition; and that time, examination, and reflection, would be requisite to fix the public opinion on a true basis. It was certain that it would become the instrument of a systematic effort against the national government and its administration; a decided engine of party to advance its own views at the hazard of the public peace and prosperity.

The events which have already taken place, are a full comment on these positions. If the good sense of the people does not speedily discountenance the projects which are on foot, more melancholy proofs may succeed.

Before the treaty was known, attempts were made to prepossess the public mind against it. It was absurdly asserted, that it was not expected by the people, that Mr. Jay was to make any treaty; as if he had been sent, not to accommodate differences by negotiation and agreement, but to dictate to Great Britain the terms of an unconditional submission.

Before it was published at large, a sketch, calculated to produce false impressions, was handed out to the public, through a medium noted for hostility to the administration of the government.—Emissaries flew through the country, spreading alarm and discontent: the leaders of clubs were every where active to seize

the passions of the people, and preoccupy their judgments against the treaty.

At Boston it was published one day, and the next a town-meeting was convened to condemn it; without ever being read, without any serious discussion, sentence was pronounced against it.

Will any man seriously believe, that in so short a time, an instrument of this nature could have been tolerably understood by the greater part of those who were thus induced to a condemnation of it? Can the result be considered as any thing more than a sudden ebullition of popular passion, excited by the artifices of a party, which had adroitly seized a favorable moment to furorize the public opinion? This spirit of precipitation and the intemperance which accompanied it, prevented the body of the merchants and the greater part of the most considerate citizens, from attending the meeting, and left those who met wholly under the guidance of a set of men, who, with two or three exceptions, have been the uniform opposers of the government.

The intelligence of this event had no sooner reached New-York, than the leaders of the clubs were seen haranguing in every corner of the city, to stir up our citizens into an imitation of the example of the meeting at Boston. An invitation to meet at the city-hall quickly followed, not to consider or discuss the merits of the treaty, but to unite with the meeting at Boston to address the President against its ratification.

This was immediately succeeded by a hand-bill, full of invectives against the treaty, as absurd as they were inflammatory, and manifestly designed to induce the citizens to surrender their reason to the empire of their passions.

In vain did a respectable meeting of the merchants endeavor, by their advice, to moderate the violence of these views, and to promote a spirit favorable to a fair discussion of the treaty; in vain did a respectable majority of the citizens of every description attend for that purpose. The leaders of the clubs resisted all discussion, and their followers, by their clamors and vociferations, rendered it impracticable, notwithstanding the wish of a manifest majority of the citizens, convened upon the occasion.

Can we believe, that the leaders were really sincere in the objections they made to a discussion, or that the great and mixed mass of citizens then assembled, had so thoroughly mastered the merits of the treaty as that they might not have been enlightened by such a discussion?

It cannot be doubted that the real motive to the opposition, was the fear of a discussion; the desire of excluding light; the adherence to a plan of surprise and deception. Nor need we desire any fuller proof of the spirit of party which has stimulated the opposition to the treaty, than is to be found in the circumstances of that opposition.

To every man who is not an enemy to the national government, who is not a prejudiced partisan, who is capable of comprehending the argument, and dispassionate enough to attend to it with impartiality, I flatter myself I shall be able to demonstrate satisfactorily in the course of some succeeding papers—

1. That the treaty adjusts, in a reasonable manner, the points in controversy between the United States and Great Britain, as well as those depending on the inexecution of the treaty of peace, as those growing out of the present European war.

2. That it makes no improper concessions to Great Britain, no sacrifices on the part of the United States.

3. That it secures to the United States equivalents for what they grant.

4. That it lays upon them no restrictions which are incompatible with their honor or their interest.

5. That in the articles which respect war, it conforms to the laws of nations.

6. That it violates no treaty with, nor duty towards any foreign power.

7. That compared with our other commercial treaties, it is, upon the whole, entitled to a preference.

8. That it contains concessions of advantages by Great Britain to the United States, which no other nation has obtained from the same power.

9. That it gives to her no superiority of advantages over other nations with whom we have treaties.

10. The interests of primary importance to our general welfare, are promoted by it.

11. That the too-probable result of a refusal to ratify, is war, or what would be still worse, a disgraceful passiveness under violations of our rights, unredressed, and unadjusted: and consequently that it is the true interest of the United States, that the treaty should go into effect.

It will be understood, that I speak of the treaty as advised to be ratified by the Senate—for this is the true question before the public.

CAMILLUS.

NO. II.

1795.

Previous to a more particular discussion of the merits of the treaty, it may be useful to advert to a suggestion which has been thrown out, namely, That it was foreseen by many, that the mission to Great Britain would produce no good result, and that the event has corresponded with the anticipation.

The reverse of this position is manifestly true.

All must remember the very critical posture of this country, at the time that mission was resolved upon. A recent violation of our rights, too flagrant and too injurious to be submitted to, had filled every American breast with indignation, and every prudent man with alarm and disquietude. A few hoped, and the great body of the community feared, that war was inevitable.

In this crisis, two sets of opinions prevailed, one looked to measures which were to have a compulsory effect upon Great Britain, the sequestration of British debts, and the cutting off intercourse wholly or partially between the two countries: the other to *vigorous preparations* for war, and *one more effort* of negotiation, under the solemnity of an extraordinary mission, to avert it.

That the latter was the best opinion, no truly sensible man

can doubt; and it may be boldly affirmed, that the event has entirely justified it.

If measures of coercion and reprisal had taken place, war, in all human probability, would have followed.

National pride is generally a very untractable thing. In the councils of no country does it act with greater force, than in those of Great Britain. Whatever it might have been in her power to yield to negotiation, she could have yielded nothing to compulsion, without self-degradation, and without the sacrifice of that political consequence, which, at all times very important to a nation, was peculiarly so to her at the juncture in question. It should be remembered, too, that from the relations in which the two countries have stood to each other, it must have cost more to the pride of Great Britain to have received the law from us than from any other power.

When one nation has cause of complaint against another, the course marked out by practice, the opinion of writers, and the principles of humanity, the object being to avoid war, is to precede reprisals of any kind, by a demand of reparation. To begin with reprisals is to meet on the ground of war, and put the other party in a condition not to be able to recede without humiliation.

Had this course been pursued by us, it would not only have rendered war morally certain, but it would have united the British nation in a vigorous support of their government, in the prosecution of it: while, on our part, we should have been quickly distracted and divided. The calamities of war would have brought the most ardent to their senses, and placed them among the first in reproaching the government with precipitation, rashness, and folly, for not having taken every chance, by pacific means, to avoid so great an evil.

The example of Denmark and Sweden is cited in support of the coercive plan. Those powers, it is asserted, by arming and acting with vigor, brought Great Britain to terms.

But who is able to tell us the precise course of this transaction, or the terms gained by it? Has it appeared that either Denmark or Sweden has obtained as much as we have done—a

stipulation of reparation for the violation of our property, contrary to the laws of war?

Besides, what did Denmark and Sweden do? They armed, and they negotiated. They did not begin by retaliations and reprisals. The United States also armed and negotiated, and, like Denmark and Sweden, prudently forbore reprisals. The conduct of the three countries agreed in principle, equally steering clear of a precipitate resort to reprisals, and contradicting the doctrines and advice of our war party.

The course pursued by our government was then in coincidence with the example of Denmark and Sweden—and, it may be added, was in every view the wisest.

Few nations can have stronger inducements than the United States to cultivate peace. Their infant state in general—their want of a marine in particular, to protect their commerce, would render war, in an extreme degree, a calamity. It would not only arrest our present rapid progress to strength and prosperity, but would probably throw us back into a state of debility and impoverishment, from which it would require years to emerge.

Our trade, navigation, and mercantile capital, would be essentially destroyed. Spain being an associate of Great Britain, a general Indian war might be expected to desolate the whole extent of our frontier—our exports obstructed, agriculture would of course languish; all other branches of industry would proportionably suffer; our public debt, instead of a gradual diminution, would sustain a great augmentation, and draw with it a large increase of taxes and burthens on the people.

But these evils, however great, were, perhaps, not the worst to be apprehended. It was to be feared, that the war would be conducted in a spirit which would render it more than ordinarily calamitous. There are too many proofs, that a considerable party among us is deeply infected with those horrid principles of jacobinism, which, proceeding from one excess to another, have made France a theatre of blood, and which, notwithstanding the most vigorous efforts of the national representation to suppress it, keeps the destinies of France, to this moment, suspended by a thread. It was too probable, that the direction of the war, if

commenced, would have fallen into the hands of men of this description. The consequence of this, even in imagination, are such as to make any virtuous man shudder.

It was, therefore, in a peculiar manner, the duty of the government to take all possible chances for avoiding war. The plan adopted was the only one which could claim this advantage.

To precipitate nothing, to gain time by negotiations, was to leave the country in a situation to profit by any events which might turn up, tending to restrain a spirit of hostility to Great Britain, and to dispose her to reasonable accommodation.

The successes of France, which opportunely occurred, allowing them to have had an influence upon the issue, so far from disparaging the merit of the plan that was pursued, serve to illustrate its wisdom. This was one of the chances which procrastination gave, and one which it was natural to take into the calculation.

Had the reverse been the case, the posture of negotiation was still preferable to that of retaliation and reprisal; for in this case, the triumphs of Great Britain, the gauntlet having been thrown by us, would have stimulated her to take it up without hesitation.

By taking the ground of negotiation in the attitude of preparation for war, we at the same time carried the appeal to the prudence of the British cabinet, without wounding its pride, and to the justice and interest of the British nation, without exciting feelings of resentment.

This conduct was calculated to range the public opinion of that country on our side, to oppose it to the indulgence of hostile views in the cabinet, and, in case of war, to lay the foundation of schism and dissatisfaction.

But one of the most important advantages to be expected from the course pursued, was the securing of unanimity among ourselves, if, after all the pains taken to avoid the war, it had been forced upon us.

As on the one hand, it was certain that dissension and discontent would have embarrassed and enfeebled our exertions, in a war produced by any circumstances of intemperance in our

public councils, or not endeavored to be prevented by all the milder expedients usual in similar cases; so, on the other, it was equally certain, that our having effectually exhausted those expedients, would cement us in a firm mass, keep us steady and persevering amidst whatever vicissitudes might happen, and nerve our efforts to the utmost extent of our resources.

This union among ourselves, and disunion among our enemies, were inestimable effects of the moderate plan, if it had promised no other advantage.

But to gain time was of vast moment to us in other senses. Not a sea-port of the United States was fortified, so as to be protected against the insults of a single frigate. Our magazines were, in every respect, too scantily supplied. It was highly desirable to obviate these deficiencies before matters came to extremity.

Moreover, the longer we kept out of war, if obliged to go into it at last, the shorter would be the duration of the calamities incident to it.

The circumstances of the injury of which we more immediately complain, afforded an additional reason for preceding reprisals by negotiation. The order of the 6th of November, directed neutral vessels to be brought in for *adjudication*. This was an equivocal phrase; and though there was too much cause to suspect that it was intended to operate as it did, yet there was a possibility of misconstruction; and that possibility was a reason, in the nature of the thing, for giving the English government an opportunity of explaining before retaliations took place.

To all this it may be added, that one of the substitutes for the plan pursued, the sequestration of debts, was a measure no less dishonest than impolitic; as will be shown in the remarks which will be applied to the 10th article of the treaty.

But is it unimportant to the real friends of republican government, that the plan pursued was congenial to the public character which is ascribed to it? Would it have been more desirable that the government of our nation, outstripping the war-maxims of Europe, should, without a previous demand of reparation, have rushed into reprisals, and consequently into a war?

However this may be, it is a well ascertained fact, that our country never appeared so august and respectable as in the position which it assumed upon this occasion.—Europe was struck with the dignified moderation of our conduct; and the character of our government and nation acquired a new elevation.

It cannot escape an attentive observer, that the language, which, in the first instance, condemned the mission of an envoy extraordinary to Great Britain, and which now condemns the treaty negotiated by him, seems to consider the United States as among the first rate powers of the world in point of strength and resources, and proposes to them a conduct predicated upon that condition.

To underrate our just importance, would be a degrading error. To overrate it, may lead to dangerous mistakes.

A very powerful state may frequently hazard a high and haughty tone with good policy; but a weak state can scarcely ever do it without imprudence. The last is yet our character; though we are the embryo of a great empire. It is, therefore, better suited to our situation to measure each step with the utmost caution; to hazard as little as possible, in the cases in which we are injured; to blend moderation with firmness; and to brandish the weapons of hostility only when it is apparent that the use of them is unavoidable.

It is not to be inferred from this, that we are to crouch to any power on earth, or tamely to suffer our rights to be violated. A nation which is capable of this meanness, will quickly have no rights to protect, or honor to defend.

But the true inference is, that we ought not lightly to seek or provoke a resort to arms; that, in the differences between us and other nations, we ought carefully to avoid measures which tend to widen the breach; and that we should scrupulously abstain from whatever may be construed into reprisals, till after the employment of all amicable means has reduced it to a certainty that there is no alternative.

If we can avoid a war for ten or twelve years more, we shall then have acquired a maturity, which will make it no more than a common calamity, and will authorize us, in our national discussions, to take a higher and more imposing tone.

This is a consideration of the greatest weight to determine us to exert all our prudence and address to keep out of war as long as it shall be possible; to defer, to a state of manhood, a struggle to which infancy is ill adapted. This is the most effectual way to disappoint the enemies of our welfare; to pursue a contrary conduct may be to play into their hands, and to gratify their wishes. If there be a foreign power which sees with envy or ill-will our growing prosperity, that power must discern that our infancy is the time for clipping our wings. We ought to be wise enough to see, that this is not a time for trying our strength.

Should we be able to escape the storm which at this juncture agitates Europe, our disputes with Great Britain terminated, we may hope to postpone war to a distant period. This, at least, will greatly diminish the chances of it. For then there will remain only one power with whom we have any embarrassing discussions. I allude to Spain, and the question of the Mississippi; and there is reason to hope, that this question, by the natural progress of things, and perseverance in an amicable course, will finally be arranged to our satisfaction without the necessity of the dernier resort.

The allusion to this case suggests one or two important reflections. How unwise would it have been to invite or facilitate a quarrel with Great Britain, at a moment when she and Spain were engaged in a common cause, both of them having, besides, controverted points with the United States! How wise will it be to adjust our differences with the most formidable of these two powers, and to have only to contest with one of them!

This policy is so obvious, that it requires an extraordinary degree of infatuation not to be sensible of it, and not to view with favor any measure which tends to so important a result.

This cursory view of the motives which may be supposed to have governed our public councils in the mission to Great Britain, serves not only to vindicate the measures then pursued, but warns us against a prejudiced judgment of the result, which may, in the end, defeat the salutary purposes of those measures.

I proceed now to observe summarily, that the objects of the

mission, contrary to what has been asserted, have been substantially obtained. What were these? They were principally,

1. To adjust the matters of controversy concerning the inexecution of the treaty of peace, and especially to obtain restitution of our western posts.

2. To obtain reparation for the captures and spoliations of our property in the course of the existing war.

Both these objects have been provided for; and it will be shown, when we come to comment upon the articles which make the provisions in each case, that it is a reasonable one, as good a one as ought to have been expected; as good a one as there is any prospect of obtaining hereafter; one which it is consistent with our honor to accept, and which our interest bids us to close with.

The provisions with regard to commerce, were incidental and auxiliary. The reasons which may be conceived to have led to the including of the subject in the mission, will be discussed in some proper place.

CAMILLUS

NO. III.

1795.

The opposers of the treaty seem to have put invention on the rack, to accumulate charges against it, in a great number of cases, without regard even to plausibility. If we suppose them sincere, we must often pity their ignorance; if insincere, we must abhor the spirit of deception which it betrays. Of the preposterous nature of some of their charges, specimens will be given, in the course of these remarks; though, while nothing, which is colorable, will remain unattended to, it were endless to attempt a distinct refutation of all the wild and absurd things which are and will be said. It is vain to combat the vagaries of diseased imaginations. The monsters they engender, are no sooner destroyed, than new legions supply their places. Upon this, as upon

all former occasions, the good sense of the people must be relied upon; and it must be taken for granted, that it will be sufficient for their conviction, to give solid answers to all such objections as have the semblance of reason; that now, as heretofore, they will maintain their character abroad and at home, for deliberation and reflection, and disappoint those who are in the habit of making experiments upon their credulity, who, treating them as children, fancy that sugar-plumbs and toys will suffice to gain their confidence and attachment, and to lead them blindfold, whithersoever it is desired.

In considering the treaty, it presents itself under two principal heads; the permanent articles, which are the first ten, and which, with some supplementary provisions, adjust the controverted points between the two countries; and the temporary articles, which are all the remaining ones, and which establish the principles of mutual intercourse, as to GENERAL navigation and commerce. The manner of the discussion will correspond with this natural division of the subject.

An objection meets the treaty at the threshold. It is said that our envoy abandoned the ground which our government had uniformly held, and with it our rights and interests as a nation, by acceding, in the preamble of the treaty, to the idea of terminating the differences between the two countries, "*in such a manner, as, without reference to the merits of their respective complaints and pretensions, may be best calculated to produce mutual satisfaction and good understanding.*"

It is observed, in support of this, that our government has constantly charged the first breaches of the treaty upon Great Britain, in the two particulars of carrying away the negroes, and detaining the posts; that while the evacuation of New-York was going on, a demand of the surrender of the negroes was made by Congress, through our commander in chief, which not being complied with, commissioners were sent, to ascertain the number carried away, with a view to a claim of compensation; that early and repeated applications were also made for the surrender of the Western Posts, which not only was not done, but it is proved by the circumstances, that orders were not given for it, according to

the true intent of the treaty, and that there was, from the beginning, a design to infract, and a virtual infraction of the article with respect to this object. All this, it is alleged, has been the uniform language of our government, and has been demonstrated by Mr. Jefferson to be true, in his letter to Mr. Hammond, of the 29th of May, 1792; and it is asserted, that the ground ought not to have been given up by Mr. Jay, because it was the standard of the mutual rights and duties of the parties, as to the points unexecuted of the treaty of peace.

A proper examination of these matters is therefore called for, not only by the specific objection which is made to the principle which is contained in the preamble, but by the influence which a right solution is calculated to have, in giving a favorable or unfavorable complexion to the whole plan of the adjustment.

It is true, as suggested, that our government has constantly charged as breaches of the treaty by Great Britain, the two particulars which have been stated; but it is believed to be not true, that it has uniformly charged them as FIRST breaches of the treaty. Individuals may have entertained this idea. The State of Virginia seems to have proceeded upon it in some public acts; but as far as is recollected, that ground was never formally or explicitly taken by the government of the United States until the above mentioned letter from Mr. Jefferson to Mr. Hammond, when, for the first time, an attempt was made to vindicate or excuse the whole conduct of this country, in regard to the treaty of peace, contrary, I will venture to say, to the general sense of well-informed men.

The most solemn act of our government on this head, is an address of Congress to the different States, of the 13th of April, 1787.

This address admits contraventions of the treaty on our part; and instead of deriving either justification or extenuation of them from prior infractions by Great Britain, urges the different States to a repeal of all contravening laws.

But if the fact, in this respect, were admitted to be, as stated by the adversaries of the treaty, it would not authorize their conclusion.

It would not follow, that, because the ground had been taken by the government, it ought to have been pertinaciously kept, if, upon fair examination, it had appeared to be not solid, or if an adherence to it would have obstructed a reasonable adjustment of differences.

Nations, no more than individuals, ought to persist in error, especially at the sacrifice of their peace and prosperity; besides, nothing is more common, in disputes between nations, than each side to charge the other with being the aggressor or delinquent. This mutual crimination, either from the nature of circumstances, or from the illusions of the passions, is sometimes sincere; at other times, it is dictated by pride or policy. But in all such cases, where one party is not powerful enough to dictate to the other, and where there is a mutual disposition to avoid war; the natural retreat for both is in compromise, which waves the question of first aggression or delinquency. This is the salvo for national pride; the escape for mutual error; the bridge by which nations, arrayed against each other, are enabled to retire with honor, and without bloodshed, from the field of contest. In cases of mutual delinquency, the question of the first default is frequently attended with real difficulty and doubt. One side has an equal right with the other, to have and maintain its opinion. What is to be done, when the pride of neither will yield to the arguments of the other? War, or a waver of the point, is the alternative. What sensible man, what humane man, will deny that a compromise, which secures substantially the objects of interest, is almost always preferable to war on so punctilious and unmanageable a point?

Reject the principle of compromise, and the feuds of nations must become much more deadly than they have hitherto been. There would scarcely ever be room for the adjustment of differences, without an appeal to the sword; and, when drawn, it would seldom be sheathed but with the destruction of one or the other party. The earth, now too often stained, would then continually stream with human gore.

From the situation of the thing, and of the parties, there never could be a rational doubt, that the compromising plan was

the only one on which the United States and Great Britain could ever terminate their differences without war; that the question, who was the first delinquent, would have been an eternal bar to accommodation, and consequently, that a dismission of that question was a prerequisite to agreement. Had our envoy permitted the negotiation to be arrested by obstinacy on this head, he would have shown himself to be the diplomatic pedant, rather than the able negotiator, and would have been justly chargeable with sacrificing to punctilio, the peace of his country. It was enough for him, as he did, to ascertain by a preliminary discussion, the impossibility of bringing the other party to concede the point.

An impartial survey of the real state of the question, will satisfy candid and discerning men, that it was wise and politic to dismiss it. This shall be attempted.

It has been observed, that two breaches of the treaty of peace are charged upon Great Britain; the carrying away of the negroes, and the detention of the posts. It remains to investigate the reality of these breaches, and to fix the periods when they can be said to have happened.

As to the negroes, the true sense of the article in the treaty of peace, which respects them, is disputed.

The words of the stipulation are (Art. 7) that "his Britannic Majesty shall, with all convenient speed, and without *causing any destruction* or *carrying away any negroes* or *other property of the American* inhabitants, withdraw all his armies, garrisons, and fleets, from the United States."

These terms admit of two constructions; one, that no negroes, or other articles which *had been* American property, should be carried away; the other, that the evacuations were to be made, *without depredation;* consequently, that no new destruction was to be committed, and that negroes, or other articles, which, at the time of the cessation of hostilities, *continued to be* the *property* of American inhabitants, unexchanged by the operations of war, should be forborne to be carried away.

The first was the construction which was adopted by this country; and the last is that insisted upon by Great Britain.

The arguments which support her construction, are these;

I. The established laws of war give to an enemy the *use* and *enjoyment*, during the war, of all *real* property, of which he obtains possession, and the absolute ownership of all *personal* proterty which falls into his hands. The latter is called *booty;* and, except ships, becomes vested in the captors the moment they acquire a firm possession. With regard to ships, it seems to be a general rule of the marine law, that condemnation is necessary to complete investment of the property in the captor.

II. Negroes, by the laws of the States, in which slavery is allowed, are personal property. They, therefore, on the principle of those laws, like horses, cattle, and other movables, were liable to become booty—and belonged to the enemy, as soon as they came into his hands. Belonging to him, he was free either to apply them to his own use, or set them at liberty. If he did the latter, the grant was irrevocable, restitution was impossible. Nothing in the laws of nations or in those of Great Britain, will authorize the resumption of liberty, once granted to a human being.

III. The negroes in question were either taken in the course of military operations, or they joined the British army upon invitation by proclamation. However dishonorable to Great Britain the latter may have been, as an illiberal species of warfare, there is no ground to say that the strict rules of war did not warrant it; or that the effect was not, in the one case, as well as in the other, a change of property in the thing.

IV. The stipulation relates to "negroes or *other property* of the *American* inhabitants;" putting negroes on the same footing with any other article. The characteristic of the subject of the stipulation being *property* of *American* inhabitants, whatever had lost that character could not be the object of the stipulation. But the negroes in question, by the laws of war, had lost that character; they were therefore not within the stipulation.

Why did not the United States demand the surrender of captured vessels, and of all other movables, which had fallen into the hands of the enemy? The answer is, because common sense would have revolted against such a construction. No one

could believe, that an indefinite surrender of all the spoils or booty of a seven years' war was ever intended to be stipulated; and yet the demand for a horse, or an ox, or a piece of furniture, would have been as completely within the terms "negroes and other property," as a negro; consequently, the reasoning which proves that one is not included, excludes the other.

The silence of the United States as to every other article, is therefore a virtual abandonment of that sense of the stipulation which requires the surrender of negroes.

V. In the interpretation of treaties, things *odious* or *immoral* are not to be presumed. The abandonment of negroes, who had been induced to quit their masters on the faith of official proclamation, promising them liberty, to fall again under the yoke of their masters, and into slavery, is as *odious* and *immoral* a thing as can be conceived. It is odious, not only as it imposes an act of perfidy on one of the contracting parties; but as it tends to bring back to servitude, men once made free. The general interests of humanity conspire with the obligation which Great Britain had contracted towards the negroes, to repel this construction of the treaty, if another can be found.

VI. But another, and a less exceptionable construction is found in considering the clause as inserted, for greater caution, *to secure evacuations without depredation*. It may be answered, that this was superfluous, because hostilities having ceased, the stipulation to surrender implied of itself, that it was to be done without depredation. But, to this the reply is, that a part of the clause manifestly contemplates the case of new depredations, and provides a guard against it, in the promise, that the evacuations shall be made without *causing any destruction*. To cause destruction is to do some new act of violence. This reflection destroys the argument drawn from the superfluousness of the stipulation in the sense here given to it, and by showing that it must have such a sense in one part, authorizes the conclusion, that the remainder of the clause has a similar sense. The connection of the two things, in parts of one sentence, confirms this inference.

These arguments certainly have great weight, and do not admit of easy refutation. It is a fact, too, that the opinions of some

of the ablest lawyers of our own country, have, from the beginning, corresponded with the construction they enforce.

It is not enough for us to be persuaded, that some of the negociators, who made the peace, intended the article in our sense. It is necessary that it should be found in the instrument itself, and, from the nature of it, ought to have been expressed with clearness and without ambiguity. If there be real ambiguity in such a case, the odiousness of the effect will incline the scale against us.

It does not remove the difficulty, to say, that compensation for the negroes might have been a substitute for the thing. When one party promises a specific thing to another, nothing but the thing itself will satisfy the promise. The party to whom it is made cannot be required to accept in lieu of it an equivalent. It follows, that compensation for the negroes would not have been a performance of the stipulation to forbear to carry them away; and therefore, if there be any thing odious in the specific thing itself, the objection to the interpretation which requires it, is not done away by the idea of substituting compensation. For the article does not admit such substitution, and its sense cannot be defined by what it does admit.

Some color to our sense of the article results from these expressions in the same clause, "leaving in all fortifications, the *American* artillery that may be therein." But this expression is not of equivalent force to that of *property* of *American inhabitants*. For example, suppose an American ship to have been captured and condemned, it might still be said of her, in a certain sense, this is an "American ship," alluding to the country of which she had been the ship; but it could not be said in any sense of her, this ship is American *property*, or the *property* of American inhabitants. The country of which a thing was, may often be used with aptness as a term of description of that thing, though it may have changed owners; but the term *property*, which is synonymous with *ownership*, can never be used in the present tense as descriptive of an ownership, which has ceased. Moreover, if the expressions in the two cases had been (as they are not) of equivalent force, it would not follow that they were to

have the same meaning in both cases, being applied to different matters. For an odious consequence in one instance, would be a reason for rejecting a particular sense of a word or phrase, which would be proper in another, to which no such consequence was attached.

Let me now ask this question of any candid man. Is our construction of the article respecting the negroes, so much better supported than that of Great Britain, as to justify our pronouncing with positiveness, that the carrying them away was a breach of the treaty?

To me it appears clear, that this must be considered, speaking favorably for us, as a very doubtful point, and that we cannot with confidence, predicate a breach of the treaty by Great Britain upon this event. If it was one, it happened in May, 1783.

The affair of the western posts is now to be examined; that the detention of them, after the proper point of time for delivering them up, was a breach of the treaty, will not bear a dispute. But what that proper time was, is a serious question between the two parties.

Our government has contended, that the posts ought to have been surrendered with all convenient speed, after the provisional treaty took effect; and Mr. Jefferson, who is much cited on the present occasion, has shown, by an ingenious and elaborate deduction of circumstances, that this was not only not done, but never intended.

But Mr. Jefferson has not even discussed the question, whether the provisional or the definitive treaty was the act from which the obligation to perform was to date. This is an important omission; for Great Britain affirms the definite treaty to be the criterion.

As an original question, much might be said on both sides. The natural relation of the terms *provisional* or *preliminary* and *definitive*, seems to exhibit the former as inchoate and imperfect, and to refer to the latter the conclusive obligatory force and legal perfection. There is room, therefore, to say, that all but the mere cessation of hostilities, or for the execution of which there is no

precise point of time fixed in the preliminary articles, is referred to in the definitive treaty.

On the other hand, it may be argued, that a preliminary treaty is as much a national treaty as a definitive one, both being made by an equal and the competent authority; and that there is no good reason why those things which are sufficiently regulated by the preliminary, should not go into immediate and complete effect, equally as if regulated by the definitive treaty; or why the latter should be considered as any thing more than an instrument for adjusting points which may have been left open by the preliminary articles, and for giving more perfect form. Accordingly, there are examples of preliminary treaties going into mutual and full execution, though never followed by definitive treaties.

But, however this question may have stood on principle, the conduct of our government in the particular case has settled it against us, and has completely sanctioned the doctrine of Great Britain.

If performance was to date from the provisional articles, this applies as well to us as to Great Britain. It was incumbent upon Congress to have notified the treaty, with the proper solemnities, to the different states and their citizens; to have made the recommendations stipulated by the fifth article; and to have enjoined the observance of all those things which we promised on our part. The nature of some of these stipulations rendered it particularly urgent that no time should be lost. But all was deferred till the ratification in this country of the definitive treaty. The 15th of January, 1784, is the date of the act which attempts to carry the treaty into effect on our part. This then is a practical settlement by ourselves of the principle, that performance was to date from the definitive treaty.

It is no objection to the position, that our sea-ports were previously evacuated; that was matter of mutual convenience; and though done, does not change the state of *strict obligation* between the parties. Even in the view of liberal and conciliating procedure, the prompt surrender of our sea-ports are, for obvious reasons, very different things.

But our dilemma is this, if the delay of orders for evacuating the western posts, previous to the ratification of the definitive treaty, was, on the part of Great Britain, a breach of treaty, our delay to act upon the points stipulated by us till after that ratification, must have been equally a breach of treaty; and it must have been at least cotemporary with any breach that could have been committed by Great Britain.

We are compelled then by our own example to agree with Great Britain, that she was not obliged to surrender the western posts till after the mutual ratification of the definitive treaty, and to abandon the superstructure, however soothing to our wishes, which has been reared upon a different foundation. If so, we must look to the period of the exchange of the ratification in Europe for the date of the orders for evacuating. I have not in my possession materials for fixing with accuracy that period; but considering the time of the ratification here, and the time of its probable arrival in England, we are carried to the latter end of April, or beginning of May, 1784; so that it is not till about May, 1784, that we can charge upon Great Britain a delinquency as to the surrender of the posts.

Having now examined the nature of the infractions of the treaty of peace charged upon Great Britain with reference to dates, I shall, in the next number of this defence, trace some instances of infraction on our part with a like reference. The conclusions to be drawn from this comparison, if I mistake not, will greatly disconcert some articles of the prevailing creed on this head, and go far towards confirming what was preliminarily offered to evince the prudence of our envoy in relinquishing the favorite ground.

CAMILLUS.

NO. IV.

1795.

An accurate enumeration of the breaches of the treaty of peace on our part, would require a tedious research. It will suf-

fice to select and quote a few of the most prominent and early instances.

One of the earliest is to be found in an act of this state, for granting a more effectual relief in cases of certain trespasses, passed the 17th of March, 1783. This act takes away from any person (subjects of Great Britain, of every description included) who had, during the war, occupied, injured, destroyed or received property, real or personal, of any inhabitant without the British lines, the benefit of the plea of a military order; consequently the justification which the laws and usages of war give, and the immunity resulting from the reciprocal amnesty, which, expressly or virtually, is an essential part of every treaty of peace. To this it may be added that it was considered by Great Britain as a direct infraction of the 6th article of her treaty with us, which exempts all persons from prosecution "by reason of the part they might have taken in the war."

Mr. Jefferson, not controverting the point that the provisions of this act were contrary to the treaty, endeavors to get rid of the inference from it, by alleging three things. 1st. That it passed antecedently to the treaty, and so could not be a violation of an act of subsequent date. 2d. That the treaty was paramount to the laws of the particular states, and operated a repeal of them. 3d. That the exceptionable principle of this act was never sanctioned by the courts of justice, and in one instance (the case of Rutgers and Waddington in the mayor's court) was overruled.

As to the first point, it is sufficient to answer, that the law continued to operate, *in fact*, from the time of the treaty till the 4th of April, 1787, when there was a repeal of the exceptionable clause, by an act of our legislature. During the period of four years, many suits were brought and many recoveries had; extending even to persons who had been in the military service of Great Britain.

To the second point, these observations may be opposed.

The articles of the confederation did not, like our present constitution, declare that treaties were *supreme laws* of the land. The United States, under that system, had no courts of their own, to expound and enforce their treaties as laws. All was to depend

upon the comparative authority of laws and treaties, in the judgment of the state courts.

The question, whether treaties were paramount to, and a virtual repeal of antecedent laws, was a question of theory, about which there was room for, and in this country did exist much diversity of opinion. It is notorious, that it has been strenuously maintained that however a national treaty ought, in good faith, to be conclusive on a state, to induce a repeal of laws contrary to it; yet its actual laws could not be controverted by treaty, without an actual repeal by its own authority. This doctrine has been emphatically that of the party distinguished by its opposition to national principles.

And it is observable, that Congress, not relying entirely upon the force of the treaty, to abrogate contravening laws, in their address already cited, urge the states to a repeal of those laws. It is likewise observable in respect to the very act under consideration, that the legislature of the state, in April, 1787, thought a positive repeal of the exceptionable clause necessary.

The complaints of a power, whose treaty with us was, *in fact*, violated by the operation of a state law, could never be satisfactorily answered by referring to a *theoretic abstract, disputed* proposition. Such a power might reply with irresistible force: "It is not for us to concern ourselves about the structure and meaning of your political constitutions, or the force of legal maxims deducible from the forms and distributions of power which you have adopted for your government. It is *the act* in which alone we are interested—you have stipulated *this* and *that* to us—your stipulation in practice is contravened. It is your duty to see that there are no impediments from conflicting authorities within yourselves, to an exact fulfilment of your promises. If you suffer any such impediment to exist, you are answerable for the consequences."

As to the third point, it is to be observed, that though there may have been no express formal decision of our courts, enforcing the exceptionable principle of the trespass act; yet there never was a decision of a supreme court against it; and it may not be amiss to remark incidentally, that the decision of the may-

or's court, from which Mr. Jefferson is glad to derive an exculpation of our conduct, was the subject of a severe animadversion at a popular meeting in this city, as a judiciary encroachment on the legislative authority of the state. The truth on this point is, that according to the opinion of our bar, a defence under a military order was desperate, and it was believed that a majority of our supreme court bench would overrule the plea. Hence, in numerous cases where it might have been used, it was waived; and the endeavor on behalf of the defendants, was either to effect on collateral grounds, a mitigation of damages, or to accomplish the best compromises that could be obtained; even the suit of Rutgers and Waddington, after a partial success in the mayor's court, was terminated by a compromise, according to the advice of the defendant's council, owing to the apprehension of an unfavorable issue in the supreme court; and this, notwithstanding the defendant was a British subject.

Under these circumstances, which are faithfully represented, is it possible to doubt, that the act in question operated a breach of our treaty with Great Britain? and this from the commencement of its existence? can we reasonably expect, that nations with whom we have treaties, will allow us to substitute theoretic problems to performances of our engagements, and will be willing to accept them as apologies for actual violations?

It is pertinent to remark, that the British commander in chief very early remonstrated against this act; but the remonstrance produced no effect.

Another act of the state of New-York may be cited as a violation of the treaty on our part, which must have been nearly cotemporary with that of the detention of the posts. Its date is the 12th of May, 1784; this act confirms, in express terms, all confiscations before made, notwithstanding errors in the proceedings, and takes away the writ of error upon any judgment previously rendered.

This was, in substance, a new confiscation; judgments which from error were invalid, were nullities. To take away the writ of error, by which their nullity might be established, was to give them an efficacy which they did not before possess; and, as to

the operation, cannot be distinguished from the rendering of new judgments. To make voidable acts of confiscation valid and conclusive, is equivalent to new acts of confiscation. A fair execution of the treaty, required, that every thing in this respect should be left where it was, and forbade the remedying of defects, in former proceedings, as much as the restitution of new judgments.

Another, and an unequivocal breach of the treaty, is found in an act of South Carolina, of March 26, 1784. This act suspends the recovery of British debts for nine months, and then allows them to be recovered only in four yearly installments, contrary to the express stipulation of the IVth article, "*that creditors on either side, shall meet with no lawful impediments to the recovery of the full value in sterling money, of all bona fide debts theretofore contracted.*"

It is idle to attempt to excuse infractions of this kind, by the pleas of distress and inability. This is to make the convenience of one party the measure of its obligation to perform its promises to another. If there was really an impossibility of payment, as has been pretended, there was no need of legislative obstruction; the thing would have regulated itself; and the very interest of the creditor was a pledge, that no general evil could have resulted from allowing a free course to the laws. If such impediments could be justified, what impediments might not be justified? What would become of the article, the only one in the treaty, to be performed by us, of real consequence to Great-Britain?

This infraction by South Carolina, was prior to that of the detention of the posts, by Great Britain.

But the case of Virginia is still stronger than that of South Carolina. There is evidence which cannot be disputed, that her courts, in defiance of the treaty, have constantly remained shut to the recovery of British debts, in virtue of laws passed during the war.

An act of her general assembly of the 22d June, 1784, after suggesting as breaches of the treaty by Great Britain, the carrying off of the negroes, and the detention of the posts, after instructing her delegates in Congress to request a remonstrance to the

British court, complaining of those infractions, and desiring reparation, and after declaring that the national honor and interest of the citizens of that commonwealth obliged the assembly to *withhold their co-operation in the complete fulfilment of the said treaty*, until the success of the aforementioned remonstrance is known, or Congress shall signify their sentiments touching the premises, concludes with the following resolution:

"That *so soon* as reparation is made for the foregoing infraction, or Congress shall judge it indisputably necessary, such acts and parts of acts *passed during the late war, as inhibit the recovery of British debts, ought to be repealed, and payment thereof made in such time and manner as shall consist with the exhausted situation of the commonwealth.*"

The plain language of this resolution is, that there were acts passed during the war, which then actually inhibited the recovery of British debts; and that for the removal of this inhibition, a repealing act by the authority of Virginia was necessary.

However unfounded this position might have been in theory, here is conclusive evidence that the fact in Virginia was conformable to it; that her courts had been, ever since the peace, then were, and until a repealing law was passed, were likely to continue to be shut against the recovery of British debts. When testimony of this kind was urged by the British minister, was it possible for our envoy to make any solid reply? Who could be supposed to know better than the legislature of Virginia, the real state of the fact? When that legislature declared it to be as has been stated, who, or what could contradict it? With what truth has it been asserted, that "it was at all times *perfectly understood*" that treaties controlled the laws of the states?

Additional proof of the contrary is found in the subsequent conduct of Virginia. On the 12th of December, 1787, the state passed an act repealing all such acts or parts of acts of the state, as had prevented, or might prevent the recovery of debts due to British subjects, according to the true intent of the treaty; but with this proviso, that there should be a suspension of the repeal, 'till the governor, by advice of council had, by proclamation, notified that Great Britain had delivered up the posts, and was tak-

ing measures for the further fulfilment of the treaty by delivering up the negroes, or by making compensation for them. This denotes clearly, that in the opinion of the legislature of Virginia, there were acts of that state which *had prevented* and *might prevent* the recovery of debts according to the treaty.

It is observable, too, that the resolutions of June, 1784, do not even give the expectation of a complete repeal of the impeding laws, in the event of reparation of the breaches of treaty by Great Britain. They only promise such a modification of them as would permit the payment in such *time and manner as should consist with the exhausted situation of the commonwealth;* that is, not according to the true intent of the treaty, but according to the opinion of the legislature of Virginia of the abilities of the commonwealth.

As the infraction which these proceedings of Virginia admit, resulted from acts passed during the war, it of course was coeval with the first existence of the treaty of peace, and seems to preclude the possibility of any prior breach by Great Britain. It has been at least demonstrated, that the detention of the posts was not such prior breach; as there was no obligation to surrender 'till after the exchange of the ratifications of the definitive treaty in England.

I pass by the serious contraventions of the treaty in this important article of the debts, which are of a later date, because they do not affect the question of the first breach, though they are of great weight to demonstrate the obligation of the United States to make compensation.

The argument then, upon the whole, as to the question of the first breach, stands thus—It is a great doubt whether the carrying away of the negroes was at all a breach. If it was one, the trespass act of this state preceded it in date, and went into operation the very moment it was possible to issue process. The detention of the posts is subsequent to breaches of the article concerning their recovery of debts on our part. This, in the case of South Carolina, is determined by the date of her act (March 26, 1784) which is before the exchange of the ratifications of the definitive treaty could have taken place. In that of Virginia, it results from her

own testimony, that impediments to the recovery of British debts, created by acts passed during the war, continued from the first moment of the peace until after the year 1787. Or if, contrary to our own interpretation, we are disposed to adhere to the provisional treaty, as the act from which performance was to date, we are guilty of a breach in not acting ourselves upon that treaty: a breach, which being cotemporary with the existence of the treaty, seems not to admit of any prior contravention. From all which it follows, that take what ground we will, we must be perplexed to fix the charge of the first breach of the treaty upon Great Britain.

Let the appeal be to the understandings and hearts of candid men—men who have force of mind sufficient to rescue themselves from the trammels of prejudice, and who dare to look even unpalatable truths in the face. Let such men pronounce, whether they are still satisfied that Great Britain is clearly chargeable with the first breaches of the treaty? Whether they are not, on the contrary, convinced that the question is one so mixed and doubtful, as to render a waiver of it, even on the score of intrinsic merit, expedient on our part? and especially whether they can entertain a particle of doubt, that it was wiser to waive it than to suffer it to prove a final obstacle to the adjustment of a controversy on which the peace of their country was suspended? This was undoubtedly the alternative to our envoy. In the choice he made, the ultimate opinion of our enlightened country cannot fail to applaud his prudence.

CAMILLUS.

V.

1795.

The discussion in the two last numbers has shown, if I mistake not, that this country by no means stands upon such good ground, with regard to the inexecution of the treaty of peace, as some of our official proceedings have advanced, and as many

among us have too lightly credited. The task of displaying this truth has been an unwelcome one. As long as a contrary doctrine was either a mere essay of polemical skill, or a convenient ingredient of negotiation, it was natural for those who thought differently of it, to prefer silence to contradiction; but when it is made the engine of great errors, of national conduct, of excessive pretensions, which forbid a reasonable accommodation, of national difference, and endangers rupture and war, on grounds which reason disapproves and prudence condemns, it becomes an indispensable duty to expose its hollowness and fallacy.—Reserve then would be a crime. The true patriot, who never fears to sacrifice popularity to what he believes to be the cause of public good, cannot hesitate to endeavor to unmask the error, though with the certainty of incurring the displeasure and censure of the prejudiced and unthinking.

The disposition to infract the treaty, which, in *several* particulars, discovered itself among us, almost as soon as it was known to have been made, was, from its first appearance, a source of humiliation, regret, and apprehension to those who could dispassionately estimate the consequences, and who felt a proper concern for the honor and character of the country. They perceived that besides loss of reputation, it must sooner or later lead to very serious embarrassments. They have been hitherto mistaken in no part of their anticipations; and if their faithful warning voice, now raised to check the progress of error, is as little listened to as when it was raised to prevent the commencement of it, there is too much cause to fear, that the expeperience of extensive evils may extort regrets which the foresight of an enlightened people ought to avert.

Citizens of United America! as you value your present enviable lot, rally round your own good sense! Expel from your confidence, men who have never ceased to misadvise you! Discard intemperate and illiberal passions! Aspire to the glory of the greatest triumph which a people can gain, a triumph over prejudice! Be just, be prudent! Listen impartially to the unadulterated language of truth! And, above all, guard your peace with anxious vigilance against all the artful snares which are

laid for it! Accompany me with minds open to conviction, in a discussion of unspeakable importance to your welfare!

Weigh well, as preliminary to further investigation, this momentous proposition. "PEACE, in the particular situation of this independent country, is an object of such GREAT and PRIMARY magnitude, that it ought not to be relinquished, unless the relinquishment be clearly necessary to PRESERVE our HONOR in some UNEQUIVOCAL point, or to avoid the sacrifice of some RIGHT or INTEREST of MATERIAL and PERMANENT importance." This is the touchstone of every question which can come before us, respecting our foreign concerns.

As a general proposition, scarcely any will dispute it; but in the application of the rule, there is much confusion of ideas; much false feeling, and falser reasoning. The ravings of anger and pride are mistaken for the suggestions of honor. Thus are we told in a delirium of rage, by a gentleman of South Carolina, that our envoy should have demanded an *unconditional* relinquishment of the western posts as a right; till which was granted, and until Lord Grenville had given orders to Lord Dorchester to that effect, *open to be sent to our President, to be by him forwarded*, he should not have *opened his lips about the treaty. It was prostrating the dearest rights of freemen, and laying them prostrate at the feet of royalty.*

In a case of incontestible, *mutual* infractions of a treaty, one of the parties is to demand, peremptorily of the other, an *unconditional* performance upon his part, by way of preliminary, and without negotiation. An envoy sent to avert war, carrying with him the clearest indications of a general solicitude of his country, that peace might be preserved, was, at the very first step of his progress, to render hostility inevitable, by exacting, not only what could not have been complied with, but what must have been rejected with indignation. The government of Great Britain must have been the most abject on earth, in a case so situated, to have listened for a moment to such a demand. And because our envoy did not pursue this frantic course; did not hold the language of an IMPERIOUS BASHAW to his TREMBLING SLAVE, he is absurdly stigmatised as having *prostrated the rights*

of freemen, at the foot of royalty. What are we to think of the state of mind which could produce so extravagant a sally? would a prudent people have been willing to have entrusted a negotiation which involved their peace to the author of it? Will they be willing to take him as their guide in a critical emergency of their affairs?*

True honor is a rational thing. It is as distinguishable from Quixotism, as true courage from the spirit of bravo. It is possible for one nation to commit so undisguised and unqualified an outrage upon another, as to render a negociation of the question dishonorable. But this seldom, if ever happens. In most cases, it is consistent with honor to precede rupture by negociation, and whenever it is, reason and humanity demand it. Honor cannot be wounded by consulting moderation. As a general rule, it is not till after it has become manifest, that reasonable reparation for a clear premeditated wrong cannot be obtained by an amicable adjustment, that honor demands a resort to arms. In all the questions between us and Great Britain, honor permitted the moderate course; in those which regard the inexecution of the treaty of peace, there had undoubtedly been mutual faults. It was, therefore, a case for negotiation and mutual reparation. True honor, which can never be separated from justice, even requires reparation from us to Great Britain, as well as from her to us. The injuries we complain of in the present war, were also of a negotiable kind. The first was bottomed on a controverted point in the laws of nations. The second left open the question, whether the principal injury was a designed act of the government or a misconstruction of its courts. To have taken, therefore, the imperious ground which is recommended, in place of that which was taken—would have been not to follow the admonitions of honor, but to have submitted to the impulse of passion and phrensy.

So likewise, when it is asserted that war is preferable to the

* No man in the habit of thinking well either of Mr. Rutledge's head or heart, but must have felt, at reading the passages of his speech which have been published, pain, surprise, and mortification. I regret the occasion, and the necessity of animadversion.

sacrifice of our rights and interests, this, to be true, to be rational, must be understood of such rights and interests as are certain, as are important, such as regard the honor, security, or prosperity of our country. It is not a right disputable, or of small consequence, it is not an interest temporary, partial and inconsiderable, which will justify, in our situation, an appeal to arms.

Nations ought to calculate as well as individuals; to compare evils; and to prefer the lesser to the greater; to act otherwise, is to act unreasonably; those who counsel it, are impostors or madmen.

These reflections are of a nature to lead to a right judgment of the conduct of our envoy in the plan of adjustment to which he has given his assent.

Three objects, as has appeared, were to be aimed at, on behalf of the United States. 1st. Compensation for negroes carried away. 2d. Surrender of the Western Posts. 3d. Compensation for spoliation during the existing war.

Two of these objects, and these in every view the most important, have been provided for; how fully will be examined hereafter. One of them has been given up (to wit) compensation for the negroes.

It has been shown, as I trust, to the conviction of dispassionate men, that the claim of compensation for the negroes, is, in point of right, a very doubtful one; in point of interest, it certainly falls under the description of partial and inconsiderable; affecting in no respect, the honor or security of the nation, and incapable of having a sensible influence upon its prosperity. The pecuniary value of the object is, in a national scale, trifling.

Not having before me the proper documents, I can only speak from memory. But I do not fear to be materially mistaken in stating that the whole number carried away, so ascertained as to have afforded evidence for a claim of compensation, was short of 3,000 persons, of whom about 1,300 were of sixteen years and upwards, men, women, and children. Computing these at an average of 150 dollars per head, which is a competent price, the amount would be 450,000 dollars, and not two or three millions, as has been pretended.

It is a fact, which I assert on the best authority, that our envoy made every effort in his power to establish our construction of the article relating to this subject, and to obtain compensation; and that he did not relinquish it, till he became convinced, that to insist upon it would defeat the purpose of his mission, and leave the controversy between the two countries unsettled.

Finding, at the same time, that the two other points in dispute could be reasonably adjusted, is there any one who will be rash enough to affirm, that he ought to have broken off the negociation on account of the difficulty about the negroes? Yes! there are men, who are thus inconsiderate and intemperate! But will a sober, reflecting people ratify their sentence?

What would such a people have said to our envoy, had he returned with this absurd tale in his mouth: "Countrymen! I could have obtained the surrender of your posts, and an adequate provision for the reparation of your losses by unjust captures—I could have terminated your controversy with Great Britain, and secured the continuance of your peace, but for one obstacle, a refusal to compensate for the negroes carried away; on this point the British government maintained a construction of the treaty different from ours, and adhered to it with inflexibility. I confess, that there appeared to be much doubt concerning the true construction; I confess, also, that the object was of inconsiderable value. Yet it made a part of our claims, and I thought the hazards of war preferable to a renunciation of it."

What would his adversaries have replied to him on such an occasion? No ridicule would have been too strong, no reproach too bitter. Their triumph would have been complete: for he would have been deservedly left without advocate, without apologist.

It cannot admit of a serious doubt, that the affair of the negroes, was too questionable in point of right, too insignificant in point of interest, to have been suffered to be an impediment to the immense objects which were to be promoted by an accommodation of differences acceptable in other respects. There was no general principle of national right or policy to be renounced. No consideration of honor forbid the renunciation, every calculation

of interest invited to it. The evils of war for one month would outweigh the advantage, if at the end of it there was a certainty of attainment.

But was war the alternative? Yes, war or disgrace.

The United States and Great Britain had been brought to issue. The recent spoliations on our commerce, superadded to the evils of a protracted Indian war, connected with the detention of the western posts, and accompanied with indications of a design to contract our boundaries, obstructing the course of our settlements and the enjoyment of private rights, and producing serious and growing discontent in our western country, rendered it indispensable, that there should be a settlement of old differences, and a reparation of new wrongs; or, that the sword should vindicate our rights.

This was certainly, and with reason, the general sense of our country, when our envoy left it. There are many indications that it was the opinion of our government; and it is to be inferred, that our envoy understood the alternative to be as has been stated.

Indeed what else could be contemplated? After the depredations which had been committed upon our commerce, after the strong sensibility which had been discovered upon the occasion in and out of our public councils, after an envoy extraordinary had been sent to terminate differences and obtain reparation; if nothing had resulted, was there any choice but reprisals? Should we not have rendered ourselves ridiculous and contemptible in the eyes of the whole world, by forbearing them?

It is curious to observe the inconsistency of certain men. They reprobate the treaty as incompatible with our honor, and yet they affect to believe an abortion of the negotiation would not have led to war. If they are sincere, they must think that national honor consists in perpetually railing, complaining, blustering, and submitting. For my part, much as I deprecate war, I entertain no doubt that it would have been our duty to meet it with decision, had negotiation failed; that a due regard to our honor, our rights and our interests would have enjoined it upon us. Nor would a pusillanimous passiveness have saved us from

it. So unsettled a state of things would have led to fresh injuries and aggravations; and circumstances, too powerful to be resisted, would have dragged us into war. We should have lost our honor without preserving our peace. Nations in similar situations have no option but to accommodate differences, or to fight. Those which have strong motives to avoid war, should, by their moderation, facilitate the accommodation of differences. This is a rule of good sense, a maxim of sound policy.

But the misfortune is, that men will oppose imagination to fact. Though we see Great Britain predominant on the ocean; though we observe her pertinaciously resisting the idea of pacification with France, amidst the greatest discouragements; though we have employed a man whose sagacity and integrity have been hitherto undisputed, and of a character far from flexible, to ascertain what was practicable; though circumstances favored his exertions; though much time and pains were bestowed upon the subject; though there is not only his testimony, but the testimony of other men who were immediately on the scene, and in whom there is every reason to confide, that all was attained which was attainable: yet we still permit ourselves to imagine, that more and better could have been done, and that by taking even now a high and menacing tone, Great Britain may be brought to our feet.

Even a style of politeness in our envoy has been construed to his disadvantage. Because he did not mistake strut for dignity, and rudeness for spirit; because he did not, by petulance and asperity, enlist the pride of the British court against the success of his mission, he is represented as having humiliated himself and his nation. It is forgotten that mildness in the manner, and firmness in the thing, are most compatible with true dignity, and almost always go further than harshness and stateliness.

Suppositions that more could be done by displaying, what is called, greater spirit, are not warranted by facts. It would be extremely imprudent on that basis, to trust ourselves to a further experiment—to the immense vicissitudes in the affairs of Europe, which from moment to moment may essentially vary the relative situations of the contending parties. If there ever was a state

of things which demanded extraordinary circumspection, and forbade a spirit of adventure, it is that of the United States at the existing juncture, viewed in connection with the present very singular and incalculable posture of Europe.

But it is asked, to avoid Scylla, may we not run upon Charybdis?—If the treaty should preserve our peace with Britain, may it not interrupt it with France?—I answer, that to me there appears no room for apprehension. It will be shown in the course of the discussion, that the treaty interferes in no particular with our engagements to France, and *will make no alteration whatever in the state of things between us and her,* except as to the selling prizes in our ports, which, not being required by treaty, was originally permitted merely because there was no law to forbid it, and which being confined to France, was of very questionable propriety on the principles of neutrality, and has been a source of dissatisfaction to the other belligerent powers. This being the case, no cause of umbrage is given to France by the treaty, and it is as contrary to her interest as to inclination, wantonly to seek a quarrel with us. Prostrate indeed were our situation, if we could not, without offending France, make a treaty with another power, which merely tended to extinguish controversy, and to regulate the rules of commercial intercourse, and this not only without violating any duty to France, but without giving any preference to another. It is astonishing that those who affect so much nicety about national honor, do not feel the extreme humiliation of such an idea. As to the denomination of alliance with Great Britain which has been given to the treaty, it is an insult to the understandings of the people, to call it by such a name. There is not a tittle of it which warrants the appellation.

CAMILLUS.

NO. VI.

1795.

There is one more objection to the treaty for what it does not do, which requires to be noticed. This is an omission to provide against the impressment of our seamen.

It is certain that our trade has suffered embarrassments in this respect, and that there have been abuses which have operated very oppressively upon our seamen; and all will join in the wish that they could have been guarded against in future by the treaty.

But it is easier to desire this, than to see how it could have been done. A general stipulation against the impressment of our seamen would have been nugatory, if not derogatory. Our right to an exemption is perfect by the laws of nations, and a contrary right is not even pretended by Great Britain. The difficulty has been, and is, to fix a rule of evidence, by which to discriminate our seamen from theirs, and by the discrimination to give ours protection, without covering theirs in our service. It happens that the two nations speak the same language, and in every exterior circumstance closely resemble each other; that many of the natives of Great Britain and Ireland are among our citizens, and that others, without being properly our citizens, are employed in our vessels.

Every body knows that the safety of Great Britain depends upon her marine. This was never more emphatically the case, than in the war in which she is now engaged. Her very existence as an independent power, seems to rest on a maritime superiority.

In this situation, can we be surprised that there are difficulties in bringing her to consent to any arrangement which would enable us, by receiving her seamen into our employment, to detain them from her service? Unfortunately, there can be devised no method of protecting our seamen which does not involve that danger to her. Language and appearance, instead of being a guide, as between other nations, are between us and Great Britain, sources of mistake and deception. The most fa-

miliar experience in the ordinary affairs of society, proves, that the oaths of parties interested cannot be fully relied upon. Certificates of citizenship, by officers of one party, would be too open to the possibility of collusion and imposition, to expect that the other would admit them to be conclusive. If inconclusive, there must be a discretion to the other party which would destroy their efficacy.

In whatever light they may be viewed, there will be found an intrinsic difficulty in devising a rule of evidence, safe for both parties, and consequently, in establishing one by treaty. No nation would readily admit a rule which would make it depend on the good faith of another, and the integrity of its agents, whether her seamen, in time of war, might be drawn from her service, and transferred to that of a neutral power. Such a rule between Great Britain and us, would be peculiarly dangerous, on account of circumstances, and would facilitate a transfer of seamen from one party to another. Great Britain has accordingly perseveringly declined any definite arrangement on the subject; notwithstanding earnest and reiterated efforts of our government.

When we consider candidly the peculiar difficulties which various circumstances of similitude, between the people of the two countries, oppose to a satisfactory arrangement, and that to the belligerent party, it is a question of *national safety*, to the neutral party a question of commercial convenience and individual security, we shall be the less disposed to think the want of such a provision as our wishes would dictate, a blemish in the treaty.

The truth seems to be, that from the nature of the thing, it is matter of necessity to leave it to occasional and temporary expedients—to the effects of special interpositions from time to time, to procure the correction of abuses; and if the abuse becomes intolerable, to the *ultima ratio;* the good faith of the parties, and the motives which they have to respect the rights of each other, and to avoid causes of offence, and vigilance in noting and remonstrating against the irregularities which are committed, are probably the only peaceable sureties of which the case is susceptible.

Our minister plenipotentiary, Mr. Pinckney, it is well known, has long had this matter in charge, and has strenuously exerted himself to have it placed upon some acceptable footing; but his endeavors have been unsuccessful, further than to mitigate the evil by some additional checks, and by drawing the attention of the British government to the observance of more caution. A more sensible effect of our representations has been lately experienced; and with attention and vigilance, that effect may be continued, and perhaps increased. But there is reason to fear that it would constantly be found impracticable to establish an efficacious conventional guard.

I proceed now to the examination of the several articles in the treaty, in the order in which they stand.

The first contains merely a general declaration that there shall be peace and friendship between the contracting parties, the countries and people of each, without exceptions of persons or places.

One would have imagined that this article, at least, would have escaped a formal objection; however it might have been secretly viewed as the most sinful of all, by those who pant after war and enmity between the two countries. Nothing but the fact could have led to a surmise that it was possible for it to have been deemed exceptionable; and nothing can better display the rage for objection, which actuates the adversaries of the treaty, than their having invented one against so innocent a provision.

But the committee appointed by a meeting at Charleston, (South Carolina) have sagaciously discovered, that this article permits "the unconditional return to our country of all persons who were proscribed during the late war."

With all but men determined to be dissatisfied, it would be a sufficient answer to such an objection to say, that this article is a formula in almost every treaty on record, and that the consequence attributed to it was never before dreamt of, though other nations besides ourselves have had their proscriptions and their banishments.

But this is not all—our treaty of peace with Great Britain in 1783, has an equivalent stipulation in these words (article 6);

"there shall be a firm and perpetual peace between his Britannic Majesty and the said States, and between the subjects of the one, and the citizens of the other." In calling this an equivalent stipulation, I speak with reference to the objection which is made. The argument to support that objection would be to this effect: "Exiles and criminals are regarded as within the peace of a country; but the people of each are, by this article, placed within the peace of the other; therefore proscribed persons are restored to the peace of the United States, and so lose the character of exiles and criminals." Hence the argument will turn upon the word "peace"—the word "friendship" will have no influence upon the question. In other respects there is no difference, in substance, between the two articles. For the terms "people," "subjects," "citizens," as used in the two treaties, are synonymous. If, therefore, the last treaty stipulates that there shall be peace between the governments, countries, and people of the two nations, the first stipulates what is equivalent, that there shall be peace between the two governments, and the subjects and citizens of each. The additional words, without exception of persons and places, can make no difference, being merely surplusage. If A says to B, "I will give you all the money in this purse," the gift is as complete as if he had said, "I give you all the money in this purse, without exception of a single dollar."

But the object of the stipulation, and the subject of the objection, have no relation to each other. National stipulations are to be considered in the sense of the laws of nations. Peace, in the sense of those laws, defines a state which is opposite to WAR. Peace, in the sense of the municipal laws, defines a state which is opposite to that of criminality. They are, consequently, different things; and a subject of Great Britain, by committing a crime, may put himself out of the peace of our government, in the sense of our municipal laws, while there might be a perfect peace with him, in the sense of the laws of nations, and *vice versa*, there might be war with him, in the sense of the laws of nations, and peace in that of the municipal laws.

The punishment of a subject of Great Britain as a felon,

would certainly not constitute a state of war between the parties, nor interfere with the peace which is stipulated by this article; though it is declared that it shall *be inviolable*, and might as well be affirmed to prevent the punishment of future, as of former criminals.

But who, in the contemplation of the laws of the respective states, are the proscribed persons? They must have been understood to have been subjects or citizens of the states which proscribed them—consequently cannot be presumed to be comprehended in an article which stipulates peace between the nations and their respective citizens.

This is not a stipulation of peace between a nation and its own citizens; nor can the idea of expatriation be admitted to go so far as to destroy the relation of citizen, as regards amenability for a crime. To this purpose, at least, the offender must remain a citizen.

There can hardly have been a time when a treaty was formed between two nations, when one or the other had not exiled criminals or fugitives from justice, which it would have been unwilling to reinstate. Yet this was never deemed an obstacle to the article, nor has an immunity from punishment ever been claimed under it, nor is there the least ground to assert that it might be claimed under it.

It follows that the objection which has been taken to this article is wholly without foundation. It is humiliating to the human understanding, or disreputable to the human heart, that similar objections should come from sensible men; it is disgustful to have to refute them. The regard I feel for some of those who have brought it forward, makes it a painful task. How great is the triumph of passion over the judgment, on this occasion.

CAMILLUS.

NO. VII.

1795.

The second article of the treaty stipulates, that his Britannic majesty will withdraw all his troops and garrisons from all *posts* and *places* within the boundary lines assigned by the treaty of peace to the United States; and that this evacuation shall take place on or before the first day of June, 1796; the United States in the mean time, *at their discretion*, extending their settlements to any part within the said boundary lines, *except within the precincts or jurisdictions* of any of the said posts—that all settlers and traders within the precincts or jurisdiction of the said posts, shall continue to enjoy, unmolested, all their property of every kind, and shall be protected therein; that they shall be at liberty to remain there, or to remove with all or any part of their effects; also to sell their lands, houses, or effects, or to retain the property thereof at their discretion; that such of them as shall continue to reside within the said boundary lines shall not be compelled to become citizens of the United States, but shall be at liberty to do so, if they think proper, making and declaring their election within a year after the evacuation; and that those who should continue after the expiration of a year, without having declared their intention of remaining subjects of his Britannic majesty, shall be considered as having elected to become citizens of the United States.

This article, which accomplishes a primary object of our envoy's mission, and one of primary importance to the United States, has been as much clamored against as if it had made a formal cession of the posts to Great Britain. On this point an uncommon degree of art has been exerted, and with no small success. The value of the principal thing obtained has been put out of sight by a misrepresentation of incidental circumstances.

But the fact is, nevertheless, that an object has been accomplished, of vast consequence to our country. The most important *desiderata* in our concerns with foreign powers are, the possession of the western posts, and a participation in the navigation of the river Mississippi. More or fewer of commercial

privileges are of vastly inferior moment. The force of circumstances will do all we can reasonably wish in this respect; and, in a short time, without any steps that may convulse our trade or endanger our tranquillity, will carry us to our goal.

The recovery of the western posts will have many important consequences. It will extinguish a source of controversy with Great Britain, which, at a period not distant, must have inevitably involved the two countries in a war, and the thing was becoming every day, more and more urgent. It will enable us effectually to control the hostilities of the northern and western Indians, and in so doing will have a material influence on the southern tribes. It will therefore tend to rescue the country from what is at present its greatest scourge, Indian wars. When we consider that these wars have, four years past, taken an extra million annually from our revenue, we cannot be insensible of the importance of terminating that source of expense. This million turned to the redemption of our debt, would contribute to complete its extinguishment in about twenty years.* The benefits of tranquillity to our frontier, exempting its inhabitants from the complicated horrors of savage warfare, speak too loudly to our humanity, as well as to our policy, to need a commentary.

The advantages of the recovery of the posts do not stop here; an extension of trade is to be added to the catalogue. This, however, need only be mentioned at this time, as it will come again into view in considering the third article.

But two consequences, not commonly adverted to, require particular notice in this place.

There is just ground of suspicion, corroborated by various concurring circumstances, that Great Britain has entertained the project of contracting our boundaries to the Ohio. This has appeared in Canada—at the British garrisons—at the Indian towns —at Philadelphia, and at London. The surrender of the posts for ever cuts up by the roots, this pernicious project. The whole of our western interests are immediately and deeply concerned in the question.

* This is a rough calculation, but it cannot materially err.

The harmonious and permanent connection of our western with our Atlantic country, materially depends on our possession of the western posts. Already has great discontent been engendered in that country by their detention. That discontent was increasing and rankling daily. It was actually one of the aliments of the insurrection in the western parts of Pennsylvania. While the posts remained in the hands of Great Britain, dangerous tamperings with the inhabitants of that country were to be apprehended—a community of views between Great Britain and Spain might have taken place, and by force and sedition, events formidable to our general union might have been hazarded. The disposition or prevention of that community of views, is a point of the greatest moment in our system of national policy. It presses us to terminate differences, and extinguish misunderstandings with Great Britain;—it urges us to improve the favorable moment, and stamps with the charge of madness, the efforts to let go the hold which the treaty, if mutually ratified, would give us.

Whoever will cast his eye upon the map of the United States, will survey the position of the western posts, their relations to our western waters, and their general bearings upon our western country; and is at the same time capable of making the reflections, which an accurate view of the subject suggests, will discover multiplied confirmations of the position, that the possession of those posts by us, has an intimate connection with the preservation of union between our western and Atlantic territories; and whoever can appreciate the immense mischiefs of a disunion, will feel the prodigious value of the acquisition. To such a man, the question may be confidently put: Is there any thing in the treaty conceded by us to Great Britain, to be placed in competition with this single acquisition? The answer could not fail to be in the negative.

But it is said by way of objection, that admitting the posts will be surrendered at the time stipulated, it is no acquisition by this treaty: it is only the enjoyment of a right which was secured by the treaty of peace.

With as much good sense might it be said, that the stipula-

tion of reparation for the spoliation of our property, or even immediate actual reparation, if it had been obtained, was nothing gained; because the laws of nations gave us a right to such reparation; and it might in this way be proved to have been impossible for our envoy to have effected any thing useful or meritorious.

Let us see what is the real state of the case. Great Britain had engaged by the treaty of peace, to surrender the western posts *with all convenient speed;* but without fixing a precise time. For the cause, or on the pretext of our not having complied with the treaty on our part, especially in not removing the impediments which the antecedent laws of particular States opposed to the recovery of British debts, she delayed, and afterwards refused to make the surrender; and when our envoy left this country, there was too much appearance of an intention on her part, to detain them indefinitely, and this after having actually kept them ten years. The treaty of peace was consequently in this particular suspended, if not superseded. It was either to be reinstated by a new agreement, or enforced by arms. The first our envoy has effected; he has brought Great Britain to abandon the dispute, and to fix a precise, determinate time when, at furthest, the posts are to be delivered up. It is therefore to this new agreement, that we shall owe the enjoyment of them, and it is, of course, entitled to the merit of having obtained them; it is a positive ingredient in its value, which cannot be taken from it; and it may be added, that this is the first time that the merit of procuring, by negotiation, *restitution* of a *right withheld*, was ever denied to the instrument which procured it.

But the picture given of the situation of Great Britain, to warrant the inferences which are drawn, is exaggerated and false. It cannot be denied that she is triumphant on the ocean; that the acquisitions which she has made upon France, are hitherto greater than those which France has made upon her. If, on the one hand, she owes an immense debt, on the other she possesses an immense credit, which there is no symptom of being impaired. British credit has become, in a British mind, an article of faith, and is no longer an article of reason. How

long it may last, how far it may go, is incalculable. But it is evident, that it still affords prodigious resources, and that it is likely, for some time to come, to continue to afford them. In addition to this, it is a well ascertained fact, that her government possesses internally, as much vigor, and has as much national support, as it perhaps ever had at any former period of her history. Alarmed by the unfortunate excesses in France, most men of property cling to the government, and carry with them the great bulk of the nation, almost the whole of the farming interest, and much the greatest proportion of other industrious classes. Her manufactures, though probably wounded by the war, are still in a comparatively flourishing condition. They suffice not only for her own supply, but for the full extent of foreign demand, and the markets for them have not been materially contracted by the war. Her foreign commerce continues to be immense; as a specimen of it, it may be mentioned, that the ships from India this year, announced to have been seen upon or near the British coast, amounted to 35 in number, computed to be worth between four and five millions sterling. It is no light circumstance in the estimate of her resources, that a vast preponderancy in that quarter of the globe continues to nourish her wealth and power.

If from a view of Great Britain, singly, we pass to a view of her in her foreign connections, we shall find no cause to consider her as a prostrate nation. Among her allies, are the two greatest powers of Europe (France excepted), namely, Russia and Austria, or the emperor: Spain and Sardinia continue to make a common cause with her. There is no power of Europe which has displayed a more uniform character of perseverance than Austria; for which she has very strong motives on the present occasion. Russia, too, is remarkable for her steadiness to her purpose, whatever it may be. It is true, that heretofore she has not discovered much zeal in the coalition, but there are symptoms of her becoming more closely and cordially engaged. If she does, she is a great weight in the scale.

Against this will be set the astonishing victories, heroic exploits, and vast armies of France, her rapid conquests to the

Rhine, the total reduction of Holland, the progress of her arms in Spain and Italy, the detaching of the king of Prussia from the coalition, and the prospect of detaching some others of the German princes; and it will be added, that the continental enemies of France appear exhausted, despairing, and unable to continue the war.

This, if offered only to show that there is no probability that the enemies of France can succeed in the original object of the war against her, or can divest her of her acquisitions on the continent, has all the force that may be desired to be given to it; but when it is used to prove that the situation of Great Britain is so desperate and humbled as to oblige her to receive from France, or the United States, any conditions which either of them may think fit to impose, the argument is carried infinitely too far. It is one thing for a country to be in a posture not to receive the law from others, and a very different thing for her to be in a situation which obliges others to receive the law from her, and what is still stronger, from all her friends. France evidently cannot annoy Russia—she cannot, without great difficulty, from their geographical position, make any further acquisitions upon the territories of Austria. Britain and her possessions are essentially safe, while she maintains a decided maritime superiority. As long as this is the case, even supposing her abandoned by all her allies, she never can be in the situation which is pretended by the opposers of the treaty.

But in describing the situation of France, only one side of the medal is presented. There is another side far less flattering, and which, in order to come to a just conclusion, must be impartially viewed.

If the allies of Great Britain are fatigued and exhausted, France cannot be in a better condition. The efforts of the latter, in proportion to intrinsic resources, have, no doubt, been much greater than those of the former. It is a consequence from this, physically certain, that France must be still more fatigued and exhausted, even than her adversaries. Her acquisitions cannot materially vary this conclusion: the low countries, long the theatre of the war, must have been pretty well emptied before

they fell into her hands. Holland is an artificial power; her life and strength were in her credit; this perished with her reduction. Accordingly the succors extracted from her, compared with the scale of the war, have been insignificant.

But it is conjectured, that as much has not been done as might have been done; that restitution of the posts has not been procured, but only a promise to restore them at a remote period, in exchange for a former promise, which had been violated. That there is no good ground of reliance upon the fulfilment of this new promise, for the performance of which there ought to have been some surety or guarantee. That the restitution of the posts ought to have been accompanied with indemnification for the detention, and for the expenses of the Indian wars which have been occasioned by that detention, and by the instigation of British intrigue. That it was better to go to war than relinquish our claim to such indemnification; or if our present circumstances did not recommend this, it was better to wait till it was more convenient to us to enforce our claims, than to give them up. These are the declamations by which this part of the treaty is arraigned. Let us see if they are the random effusions of enthusiasm, or the rational dictates of sound policy.

As to the suggestion, that more might have been done than was done, it must of necessity be mere conjecture and imagination. If the picture given of the situation of Great Britain, was better justified by facts than it is, it would not follow that the suggestion is true; for the thing would depend not on the real situation of the country, but on the opinion entertained of it by its own administration, on the personal character of the prince and of his council; on the degree in which they were influenced by pride and passion, or by reason. The hypothesis, that the dispositions of a government are conformable with its situation, is as fallacious a one as can be entertained. It is to suppose, contrary to every day's experience, that cabinets are always wise. It is, on the part of those who draw the inference, to suppose, that a cabinet, the most violent, rash, and foolish, of Europe, is at the same time moderate and prudent enough to act according to the true situation of the country. Who of our enthusiasts,

reasoning from his view of the abased condition of Great Britain, has not long since imagined that she ought to be on her knees to France, suing for mercy and forgiveness? Yet how different hitherto is the fact! If we carefully peruse the speeches of the leading members of the convention, we shall observe the menaces against Britain frequently interspersed with invitations to peace; while the British government maintains a proud and distant reserve, repels every idea of peace, and inflexibly pursues the path of war. If the situation of Europe in general, and of Great Britain in particular, as is pretended, authorized us to expect whatever we chose, how happens it that France, with all her victories, has not yet been able to extort peace?

As to the true position of France, we are not left to mere inference. All the official reports, all the private accounts from thence acknowledge a state of extreme embarrassment and distress; an alarming derangement of the finances, and a scarcity not distant from famine. To this are to be added, a continuance of violent and destructive conflicts of parties, and the unextinguishable embers of insurrection.

This fair comparison of the relative situation of the contending parties, will, I know, be stigmatized as blazoning the strength and resources of Great Britain, and depreciating the advantages of France. But the cant phrases of party cannot alter the nature of truth—nor will they prevent the people of the United States from listening impartially to it, or from discerning that it is a mark of fidelity to their interests, to counteract misrepresentation, by placing facts fairly before them, and a duty which they owe to themselves, and which they cannot omit to perform without betraying their own interests, to receive them candidly, and weigh them maturely.

The conclusion is, that all those highly-charged declamations which describe Great Britain to us as vanquished and humbled; as ready to pass under the yoke at command, and to submit to any conditions which we may think fit to prescribe, are either the chimeras of over-heated imaginations, or the fabrications of impostors; and if listened to, can have no other effect than to inspire a delusive presumption, and a dangerous temerity.

But to judge the better of the extravagance of these declamations, it will be useful to go back to the periods when the negotiation began and ended. Our envoy arrived in England, and entered upon the business of his mission, at the moment when there was a general elation on account of the naval victory gained by Lord Howe, and previous to those important successes which have terminated in the conquest of Holland; and the treaty was concluded by the 19th of November last, prior to the last mentioned event, and the defection of the king of Prussia. The posture of things at the time it was in negotiation, and not at this time, is the standard by which to try its merits; and it may be observed, that it is probable the negotiation received its first impression, and even its general outline, anterior to the principal part of the disasters sustained by the coalesced powers in the course of the last campaign.

It may not be improper to add, that if we credit the representations of our envoy, Great Britain manifested similar dispositions with regard to the treaty at the commencement as at the close of the negotiation: whence it will follow, that too much has been attributed in this country to the victories of France.

The subject of the second article will be resumed and concluded in the next number.

CAMILLUS.

NO. VIII.

1795.

One of the particulars, in which our envoy is alleged to have fallen short of what might or ought to have been done, respects the time for the surrender of the western posts. It is alleged, that there ought either to have been an immediate surrender, or some guarantee or surety for the performance of the new promise. Both parts of the alternative presuppose that Great Britain was to have no will upon the subject; that no circumstances of security or convenience to her were to be con-

sulted; that our envoy was not to negotiate, but to command. How unsubstantial the foundation on which this course of proceeding is recommended, has been already developed.

The fact was, that our envoy pressed an early evacuation of the posts; but there was an inflexible adherence, on the other side, to the term limited in the treaty. The reasons understood to have been assigned for it, were to this effect, viz. That according to the course of the Indian trade, it was customary to spread through the nations, goods to a large amount, the returns for which could not be drawn into Canada, in a shorter period than was proposed to be fixed for the evacuation; that the impression which the surrender of all the posts to American garrisons might make on the minds of the Indians, could not be foreseen; that there was the greatest reason for caution, as, on a former occasion, it had been intimated to them by public agents of the United States, that they had been *forsaken* and *given up* by the British government; that the protection promised on our part, however sincere, and however competent in other respects, might not be sufficient in the first instance to prevent the embarrassment which might ensue; that for these reasons the traders ought to have time to conclude their adventures, which were predicated upon the existing state of things; that they would in future calculate upon the new state of things; but that, in the mean time, the care of government ought not to be withdrawn from them.

There is ground to believe, that there were representations on behalf of the Canada traders, alleging a longer term than that which was adopted in the treaty, to be necessary to wind up and adapt their arrangements to the new state of things; and that the term suggested by them was abridged several months. And it may not be useless to observe, as explanatory to the reasons given, that in fact it is the course of the trade to give long credits to the Indians, and that the returns for goods furnished in one year, only come in the next year.

What was to be done in this case? Was the negotiation to break off, or was the delay to be admitted? The last was preferred by our envoy; and the preference was rightly judged.

The consequence of breaking off the negotiation has been stated. No reasonable man will doubt, that delay was preferable to war, if there be good ground of reliance, that the stipulation will be fulfilled at the appointed time. Let us calmly examine this point.

The argument against it, is drawn from the breach of the former promise. To be authorized to press this argument, we ought to be sure that all was right on our part. After what has been offered on this subject, are we still convinced that this was the case? Are we able to say, that there was nothing in our conduct which furnished a ground for that of Great Britain? Has it not been shown to be a fact, that, from the arrival of the provisional articles in this country, till after the ratification thereof, by the definitive treaty, acts of States interdicting the recovery of British debts, and other acts militating against the treaty, continued in operation? Can we doubt, that subjects of Great Britain, affected by these acts, carried complaints to the ears of their government? Can we wonder, if they made serious impressions there, if they produced dissatisfaction and distrust? Is it very extraordinary, if they excited the idea of detaining the posts as a pledge, till there were better indications on our part? Is it surprising, if the continuance of these acts, and the addition of others, which were new and positive breaches of the treaty, prolonged the detention of the posts?

In fine, was the delay in surrendering so entirely destitute of cause, so unequivocal a proof of a perfidious character, as to justify the conclusion, that no future dependence can be made on the promises of the British government? Discerning men will not hastily subscribe to this conclusion.

Mutual charges of breach of faith are not uncommon between nations: yet this does not prevent their making new stipulations with each other, and relying upon their performance. The argument from the breach of one promise, if real, to the breach of every other, is not supported by experience; and if adopted as a general rule, would multiply, infinitely, the impediments to accord and agreement among nations.

The truth is, that though nations will too often evade their

promises on colorable pretexts, yet few are so profligate as to do it without such pretexts. In clear cases, self-interest dictates a regard to the obligations of good faith: nor is there any thing in the history of Great Britain which warrants the opinion, that she is more unmindful than other nations, of her character for good faith.

Yet she must be so, and in an extreme degree, if she be capable of breaking, without real cause, a *second* promise on the *same* point, after the termination, by a new treaty, of an old dispute concerning it, and this too on the basis of mutual reparation. It would indicate a destitution of principle, a contempt of character, much beyond the usual measure, and to an extent which it may be affirmed is entirely improbable.

It is a circumstance of some moment in the question, that the second promise is free from the vagueness of the first, as to the time of execution. It is not to be performed *with all convenient speed*, but by a day certain, which cannot be exceeded. This would give point to violation, and render it unequivocal.

Another argument, against the probability of performance, has been deduced from the supposed deficiency of good reasons for the delay, which is represented as evidence of want of sincerity in the promise.

Besides the reasons, which were assigned for that delay, there are others that may be conjectured to have operated, which it would not have been equally convenient to avow; but which serve to explain the delay different from the supposition of its having been calculated for ultimate evasion. If, as we have with too much cause suspected, Great Britain, or her representatives in Canada, whether with or without orders, had really countenanced the hostilities of the western Indians, it was to be expected, that she should think it incumbent upon her, to give them sufficient time to make peace, before an evacuation of the posts should put them entirely in our power. She might, otherwise, have provoked them to hostilities against her own settlements, and have kindled in their minds inextinguishable resentments. It was not certain how soon a peace should be brought about; and it might be supposed, that the disposition to it on

our part might be weakened or strengthened by the proximity or remoteness of the period of the surrender. Moreover, some considerable time might be requisite to prepare those establishments for the security of Canada, which the relinquishment of the posts on our side would be deemed to render necessary.

The latter motive is one not justly objectionable: the former implies an embarrassment, resulting from a culpable policy, which was entitled to no indulgence from us, but which, nevertheless, must have had a pretty imperious influence on the conduct of the other party, and must have created an obstacle to a speedy surrender, not easy to be surmounted. Taken together, we find in the reasons assigned, and in those which may be presumed to have operated, a solution of the pertinacity of Great Britain on the subject of time, without impeaching, on that account, the sincerity of the promise to surrender.

But we have very strong holds, for the performance of this promise, upon the interest of Great Britain: 1st. The interest which every nation has, in not entirely forfeiting its reputation for honor and fidelity. 2d. The interest which results from the correlative stipulation with regard to the indemnification for the British debts, a point upon which there will be no inconsiderable mercantile sensibility. 3d. The interest of preserving peace with this country, the interruption of which, after all that has passed, could not fail to attend the non-surrender of the posts at the stipulated time.

It is morally certain, that circumstances will every day add strength to this last motive. Time has already done much for us, and will do more. Every hour's continuance of the war in Europe, must necessarily add to the inconveniences of a rupture with this country, and to the motives which Great Britain must feel, to avoid an increase of the number of her enemies, to desire peace, and, if obtained, to preserve it.

The enemies of the treaty, upon their own calculations, can hardly dispute, that if the war continues another year after the present, the probable situation of Great Britain will be a complete security for her compliance with her promise to surrender the posts. But let us suppose that a general peace takes place

in Europe this winter, what may then be the disposition of Great Britain in June next, as to war or peace with this country?

I answer, that the situation will be, of all others, that which is most likely to indispose her to a war with us. There is no juncture, at which war is more unwelcome to a nation, than immediately after the experience of another war, which has required great exertions, and has been expensive, bloody, and calamitous. The minds of all men then dread the renewal of so great an evil, and are disposed rather to make sacrifices to peace than to plunge afresh into hostilities. The situation of Great Britain, at the end of the war in which she is now engaged, is likely to be the most discouraging that can be imagined to the provocation of new wars. Here we may discover a powerful security for the performance of her stipulations.

As to the idea of a guarantee or surety for the fulfilment of the promise, it cannot be seriously believed that it was obtainable. It would have been an admission of the party, that there was a well-founded distrust of its faith. To consent to it, therefore, would have been to subscribe to its own humiliation and disgrace, the expectation of which has been shown to be ridiculous.

But why was there not equally good reason that we should have given a guarantee or surety for the performance of our new promise, with regard to the debts? And if there was to have been reciprocity, where should we have conveniently found that guarantee or surety? Should we have thought it very reputable to ourselves, to have been obliged to furnish it?

The arguments of the opposers of the treaty are extremely at variance with each other. On the one hand, they represent it as fraught with advantages to Great Britain, without equivalents to the United States—as a premeditated scheme to sacrifice our trade and navigation to hers—as a plan dictated by her, for drawing the two countries into close connection and alliance, and for making our interests subservient to hers; on the other hand, they tell us, that there is no security for the surrender of the posts, according to stipulation. How is the one thing to be reconciled with the other? If the treaty is such an immense boon to Great Britain, if it be such a master-piece of political craft on her side,

can there be any danger that she will destroy her favorite work, by not performing the conditions on which its efficacy and duration must depend? There is no position better settled, than that the breach of any article of a treaty by one party, gives the other an option to consider the whole treaty as annulled. Would Great Britain give us this option, in a case in which she had so much to lose by doing it?

This glaring collision of arguments, proves how superficially the adversaries of the treaty have considered the subject, and how little reliance can be placed on the views they give of it.

In estimating the plan which the treaty adopts, for the settlement of the old controversy, it is an important reflection, that, from the course of things, there will be nothing to be performed by us before the period for the restitution of the posts will have elapsed; and that, if this restitution should be evaded, we shall be free to put an end to the whole treaty, about which there could not be a moment's hesitation. We should then be where we were before the treaty, with the advantage of having strengthened the justice of our cause, by removing every occasion of reproach, which the infractions of the treaty of peace may have furnished against us.

Two other particulars, in which this part of the treaty is supposed to be defective, regard the want of indemnification for the detention of the posts, and for the expenses of Indian wars.

Those who make the objection, may be safely challenged to produce precedents of similar indemnifications, unless imposed by *conquering* powers on the vanquished, or by powers of overbearing strength upon those which were too weak to dispute the logic of superior force. If this were the real situation of the United States and Great Britain, then is the treaty inexcusably faulty; but if the parties were to treat and agree as equal powers, then is the pretension extravagant and impracticable. The restitution of the specific thing detained, is all that was to be expected, and, it may be added, it is all that was ever really expected on the part of this country, so far as we may reason either from official acts or informal expressions in the public opinion.

In cases where clear injuries are done, affecting objects of

known or easily ascertained values, pecuniary compensation may be expected to be obtained by negotiation; but it is believed that it will be impossible to cite an example of compensation so obtained, in a case in which territory has been withheld on a dispute of title, or as a hostage for some other claim (as, in the present instance, for securing the performance of the 4th article of the treaty of peace). The recovery of the territory withheld is the usual satisfaction.

The want of a rule to adjust consequential damages, is, in such cases, a very great difficulty. In the instance under discussion, this difficulty would be peculiarly great. The posts are, for the most part, in a wilderness. There are but two of them which have any adjacent settlements; Point-au-Fer, or Dutchman's Point, to which a part of a tract of land, called Caldwell's Manor, with a few inhabitants, has been claimed as appurtenant; and Detroit, which has a settlement in the town and neighborhood of between two and three thousand souls. In the vicinity of the other posts, on our side, there is scarcely an inhabitant. It follows, that very little damage could be predicated either upon the loss of revenue from, or of the profits of trade with, the settlements in the vicinity of the posts. The trade of the Indians within our limits would consequently be the basis of the claim of compensation. But here the ignorance or spirit of exaggeration of the opponents of the treaty has been particularly exemplified. The annual loss from this source has been stated by a very zealous writer against the treaty, who signs himself Cato, at 800,000 dollars.

Now it is a fact well ascertained, that the mean value of the whole exports from Canada in peltries (which constitute the returns of Indian trade) in the years 1786 and 1787, was something short of 800,000 dollars. It is also a fact, in which all men, informed on the subject, agree, that the trade with the Indians, within our limits,* is not more than about one-eighth of that

* An account of peltries exported from Canada in 1786 and 1787.

		1786.	1787.
Beaver	skins,	116,509	139,509
Martin	do.	58,132	68,132
Otter	do.	26,330	26,330

which furnishes the peltry exported from Canada. Hence the total product of our Indian trade could not be computed at more than 100,000 dollars. What proportion of this may be profit, is not easy to be determined; but it is certain, that the profits of that trade, from the decrease of wild animals, and the inferiority of their kinds, are not considerable.—Many assert, that it is scarcely any longer worth following. Twenty per cent., therefore, would, probably, be a large allowance, which would bring the loss on our Indian trade, by the detention of the posts, to about 20,000, instead of 800,000 dollars per annum, as has been asserted.

But might not a claim, even of this sum, by way of indemnification, be encountered with some force, by the observation, that there is the highest probability that the capital and labor which would have been employed to produce 20,000 dollars profit on the trade with the Indians, have been quite as productively employed in other channels, and consequently, that there may have been no loss at all?

Thus we see how erroneous are the data which serve to magnify claims, in themselves insignificant, and which, from the great uncertainty of their quantum, are exposed to serious objections. Are claims like these, proper subjects on which to stake the peace of the United States?

The reasonableness of indemnification for the expenses of

		1786.	1787.
Mink	do.	9.951	17.951
Fisher	do.	5,813	5 813
Fox	do.	6,213	8.913
Bear	do.	22,108	17,108
Deer	do.	126,000	102,656
Racoon	do.	108,346	140.346
Cat	do. cased,	3.026	4,526
Do.	do. open,	2.925	1.825
Elk	do.	7,515	9.815
Wolf	do.	12.287	9,687
Carcajoux	do.	503	653
Tiger	do.	77	27
Seal	do.	157	125
Muskrat	do.	202,456	240.456
Deer	do. dressed,	5,488 lbs.	1,778 lbs.
Castors		1,454 lbs.	1,434 lbs.

Indian wars, independent of the unusual nature of the claim, might have been matter of endless debate. We might have been told, that the Indians ascribe those wars to pretensions upon their lands, by virtue of treaties with the former government of the United States, imposed by violence, or contracted with partial and inadequate representations of their nation—that our own public records witness, that the proceedings of our agents, at some of those treaties, were far from unexceptionable—that the wars complained of are to be attributed to errors in our former policy, or mismanagement of our public agents, not to the detention of the posts—that it must be problematical how much of the duration or expenses of those wars are chargeable upon that detention—and, that the posts having been detained by way of security for the performance of the article respecting debts, there was no responsibility for collateral and casual damages. Had we resorted to the charge of their having instigated or prompted those wars, they would have denied the charge, as they have repeatedly done before; and, though we might have been able to adduce circumstances of suspicion against them, they would have contested their validity and force; and, whether guilty or not, would have thought their honor concerned in avoiding the most distant concession of having participated in so improper a business.

In every view, therefore, the claim for indemnification was a hopeless one; and to insist upon it would have answered no other purpose than to render an amicable adjustment impossible. No British minister would have dared to go to a British parliament to ask provision for such an expenditure. What, then, was to be done? Were we now or hereafter to go to war to enforce the claim? Suppose this done, and fifty or a hundred millions of dollars expended in the contest, what certainty is there that we should at last accomplish the object?

Moreover, the principle of such a war would require, that we should seek indemnification for the expenses of the war itself, in addition to our former claim. What prospect is there, that this also would be effected? yet if not effected, it is evident that we should have made a most wretched bargain.

Why did we not insist on indemnification for the expenses of our revolution war? Surely, not because it was less reasonable, but because it was evident that it could not have been obtained, and because peace was necessary to us as well as to our enemy. This likewise would be the end of a war undertaken to enforce the claim of indemnification for the detention of the posts. We should at length be glad to make peace, either without the indemnification sought, or at best at an expense to carry on the war, without a chance of reimbursement, with which the thing gained would bear no comparison.

The idea which has been thrown out, of leaving the posts in the hands of the British, till we might be better able than at present to go to war for indemnification, is a notable political expedient. This would be to postpone, of choice, the possession of an object which has been shown to be demanded by very urgent and important general considerations; to submit to certain and great inconveniences from that privation, including probably the continuance or renewal of Indian hostilities; and to run the risk, from the growth of the British settlements in the neighborhood of the posts, and various unforeseen casualties, of their ultimate acquisition becoming difficult and precarious. For what? why, to take at last the chances of war, the issue of which is ever doubtful, to obtain an object, which, if obtained, will certainly cost more than it is worth. The expenses of war apart, pecuniary indemnification upon any possible scale, would ill compensate for the evils of the future detention, till the more convenient time for going to war should arrive. What should we think of this policy, if it should turn out that the posts and the indemnification too were to be finally abandoned?

CAMILLUS.

NO. IX.

1795.

It was my intention to have comprised in two numbers, the examination of the 2d article; but on experiment, it was found

expedient to add a third. I resume, for a moment, the subject of indemnification for the detention of the posts.

As an inducement to persist in this claim, we are assured, that the magnanimity of France would have procured for us its establishment. In the first place, this supposes that we were to have become a party in the war; for otherwise it would be silly to imagine, that France would, on our account, embarrass herself with a difficulty of this sort. In this case, and supposing the object accomplished, still the injuries, losses, and expenses of war would have greatly overbalanced the advantage gained. But what certainty have we, that France will be able to dictate terms, even for herself? Could we expect or rely, after the terrible and wasting war, in which she has been engaged, that she would be willing to encumber the making of peace with additional obstacles, to secure so trifling a point with us? Would it be even humane, or friendly in us, to ask her to risk the prolonging of her calamities, for so trivial an object? A conduct like this, with reference either to France, or to ourselves, would resemble that of the gamester, who should play *millions* against *farthings*. It is so preposterous in every sense, that the recommendation of it, if sincere, admits of but one construction, namely, that those who recommend it, wish our envoy to have acted not as if he had been sent *to make peace*, but as if he had been sent *to make war*, to blow and spread the desolating flames of discord and contention.

There is a marked disingenuousness running through the observations which are made to the prejudice of the treaty: they endeavor constantly to have it understood, that our envoy abandoned, without effort, the claims which have not been established. Whence is this inferred? Is it from the silence of the treaty? Surely we can only expect to find there what was *agreed upon*, not what was *discussed* and *rejected*. The truth is, that as well on this point of indemnification for the detention of the posts, as on that of compensation for the negroes carried away, our envoy urged our pretensions as far and as long as he could do it, without making them final obstacles to the progress of the negotiation.

I shall now enumerate and answer the remaining objections, which have appeared against this article. They are these: 1. That the posts to be surrendered, instead of being described in general terms, should, for greater certainty, have been specially enumerated; that now the uncertainty of a part of the boundary line, may furnish a pretext for detaining some of them. 2. That the expressions "precincts and jurisdictions," which are excepted from our right of settlement, previous to the surrender, are so vague and indeterminate, as to be capable of being made to countenance encroachments. 3. That it was improper to have stipulated, for the inhabitants, the option of residing and continuing British subjects, or of becoming American citizens: that the first was established, by treaty, a British colony, within our limits; the last to admit, without the power of exception, bitter enemies of the country to the privileges of citizens. 4. That the securing to those inhabitants the enjoyment of their property is exceptionable, as being a "cession without equivalent of an *indefinite extent of territory.*" This is the character given to it by the meeting at Philadelphia.

The answer to the first objection, is, that the enumeration proposed might have included the very danger which is objected to the provision as it stands, and which is completely avoided by it. The principal posts occupied by the British, are known and might easily have been enumerated; but there is a possibility of there being others not known, which might have escaped. Last year there started up a post, which had not been before heard of, on the pretence of an old trading establishment. Who knows with absolute certainty, how many similar cases may exist in the vast extent of wilderness, as far as the Lake of the Woods, which, for several years past, has been inaccessible to us? If our envoy's information could have been perfect, at the time of his last advices from America, between that period and the signing of the treaty changes might have taken place, that is, trading houses might have grown into military posts, as they did in the case referred to; a case, which, in fact, happened after the departure of our envoy from the United States. Was it not far better than to hazard an imperfect specification, to use terms so

general and comprehensive, as could not fail, in any circumstances, to embrace every case? Certainly it was; and the terms "*all ports and places*," which are those used in the treaty, are thus comprehensive. Nothing can escape them.

Neither is there the least danger that the uncertainty* of a part of the boundary line, can be made a pretext for detaining the posts which it was impossible to enumerate. This will appear from an inspection of the map. The only uncertain part of the boundary line (except that depending on the river St. Croix, which is on a side unconnected with the position of the posts) is that which is run from the Lake of the Woods to the Mississippi. The most western of our known posts is at Michilimackinac, at or near the junction of the Lakes Huron and Michigan, eastward near eleven degrees of longitude of the Lake of the Woods, and about ten degrees of longitude of that point, on the Mississippi, below the falls of St. Anthony, where a survey, in order to a settlement of the line, is to begin. Moreover, our line, by the treaty of peace, is to pass through the Lake Huron, and the water communication between that lake and Lake Superior, and through the middle of Lake Superior, and thence westward through other waters, to the Lake of the Woods; that is, about half a degree of latitude more northward, and about eight degrees of longitude more westward, than any part of the Lake Michigan. Whence it is manifest, that any closing line, to be drawn from the Lake of the Woods to the Mississippi, must pass at a distance of several hundred miles from Michilimackinac. If the British, therefore, should be disposed to evade the surrender, they will seek for it some pretext more plausible than one which involves a palpable geographical absurdity. Nor can we desire a better proof of the ignorance or disingenuousness of the objectors to the treaty, than their having contrived one of this nature.

The general terms used, were to be preferred, for the very

* This uncertainty, it is to be observed, results not from the late treaty, but from the treaty of peace. It is occasioned by its being unknown, whether any part of the Mississippi extends far enough north, to be intersected by a due west line from the Lake of the Woods.

reason, that there was a doubt about the course of a part of the boundary line; for, if there should chance to exist any post now unknown, so near the line as to render it questionable, in the first instance, on which side it may fall; the moment the line is settled, the obligation to surrender will be settled with it.

The second objection loses all force, when it is considered, that the exception can only operate till the first of June next, the period for the surrender of the posts; and that, in the mean time, there is ample space for settlement, without coming to disputable ground. There was, besides, real difficulty in an accurate definition. What the precincts and jurisdictions of the posts are, is a question of fact. In some instances, where, from there being no settlements over which an actual jurisdiction had been exercised, a good rule might have been, the distance of gun-shot from the fortifications, which might have been settled at a certain extent in miles, say three or four. But in some cases an actual jurisdiction has been exercised, under circumstances which created obstacles to a precise definition. The case of Caldwell's Manor, in the vicinity of Dutchman's Point, is an example. There, a mixed jurisdiction has been sometimes exercised by the British, and by the State of Vermont, connected with a disputed title to that manor; one party claiming under an ancient French grant, and the other under the State of Vermont. Detroit and its vicinity would also have occasioned embarrassment. From the situation of the settlements, and of a number of dispersed trading establishments, a latitude was likely to have been required, to which it might have been expedient to give a sanction. In such situations, where a thing is to last but a short time, it is commonly the most eligible course, to avoid definition. It is obvious, that no ill can result from the want of one, if the posts are surrendered at the time agreed; if not, it is equally plain, that it can be of no consequence, because the whole article will be void.

The third objection becomes insignificant, the moment the real state of things is adverted to. This has been described in a former number for another purpose, but will now be recapitulated, with one or two additional facts. The first posts, beginning

eastward, are, Point-au-Fer and Dutchman's Point, on Lake Champlain. The whole number of persons in this vicinity, over whom jurisdiction has been claimed by the British, may amount to an hundred families. But the claim of jurisdiction here, has been only occasionally and feebly urged; and it is asserted in addition, by well-informed persons, that the above-mentioned families have been, for some time, regularly represented in the legislature of Vermont, the ordinary civil jurisdiction of which State has, with little interruption, been extended over them. At neither of the other posts, to wit, Oswego, Niagara, the Miami, Detroit, Michilimackinac, is there any settlement, except at Detroit, where, and in the vicinity of which, there may be between two and three thousand persons, chiefly French Canadians, and their descendants. It will be understood, that I do not consider as a settlement, two or three log houses for traders.

It follows, that the number of persons who can be embraced by the privileges stipulated, is too inconsiderable to admit of attaching any political consequences whatever to the stipulation. Of what importance can it possibly be, to the United States, whether two or three thousand persons, men, women, and children, are permitted to reside within their limits, either as British or American subjects, at their option? If the thing was an object of desire to Great Britain, for the accommodation of the individuals concerned, could it have merited a moment's hesitation on our part? As to residence, it is at the courtesy of nations at peace to permit the residence of the citizens of each other within their respective territories. British subjects are now free by our laws, to reside in all parts of the United States. As to the permission to become citizens, it has been the general policy and practice of our country to facilitate the naturalization of foreigners. And we may safely count on the interest of individuals, and on that desire to enjoy equal rights which is so deeply planted in the human breast, that all who resolve to make their permanent residence with us, will become citizens.

It is true, that there may be a few obnoxious characters (though I do not recollect to have heard of more than two or three) among the number of those who have acquired by the

stipulation, a right to become citizens of the United States. But would it ever have been worthy of the dignity of the national wrath, to have launched its thunders against the heads of two, or three, or half a dozen despicable individuals? Can we suppose that, without a stipulation, it would have been thought worth the while to make a special exception of their cases out of the operation of our general laws of naturalization? And if this had not been done, would they not have found means, if they desired it, after the lapse of a short period, to acquire the rights of citizens? It is to be observed, that citizens of our own, who may have committed crimes against our laws, not remitted by the treaty of peace, would find no protection under this article.

Suppose the stipulation had not been made, what would have been the probable policy of the United States? Would it not have been to leave the handful of settlers undisturbed, in quiet enjoyment of their property, and at liberty, if British subjects, to continue such, or become American citizens, on the usual conditions? A system of depopulation, or of coercion to one allegiance or another, would have been little congenial with our modes of thinking, and would not, I am persuaded, have been attempted.

If, then, the treaty only stipulates in this respect, what would have been the course of things without it, what cause for serious objection can there be on this account?

The matter of the fourth objection can only derive a moment's importance from misapprehension. It seems to have been imagined, that there are large tracts of land, held under British grants, made since the peace, which are confirmed by the part of the article that gives the inhabitants the right of removing with, selling, or *retaining* their property.

In the first place it is to be observed, that if such grants had been made, the stipulation could not be deemed to confirm them; because our laws must determine the question, what is the property of the inhabitants; and they would rightfully decide, that the British government, since the treaty of peace, could make no valid grants of land, within our limits. Upon the ground even of its own pretensions, it could not have made such grants.

Nothing more was claimed, than the right to detain the posts as a hostage. The right to grant lands presupposes much more, a full right to sovereignty and territory.

But in the second place, it has always been understood, and upon recent and careful inquiry is confirmed, *that the British government has never, since the peace, made a grant of lands within our limits.* It appears, indeed, to have been its policy, to prevent settlements in the vicinity of the posts.

Hence the stipulation, as it affects lands, does nothing more than confirm the property of those which were holden at the treaty of peace; neither is the quantity considerable; and it chiefly, if not altogether, depends on titles acquired under the French government, while Canada was a province of France.

In giving this confirmation, the treaty only pursues what is a constant rule among civilized nations. When territory is ceded or yielded up by one nation to another, it is a common practice, if not a special condition, to leave the inhabitants in the enjoyment of their property. A contrary conduct would be disgraceful to a nation; nor is it very reputable to the objectors to the treaty, that they have levelled their battery against this part of it. It is a reflection upon them too, that they employ for the purpose, terms which import more than is true, even on their own supposition, and are, therefore, calculated to deceive; for the confirmation of property to individuals, could be at most a cession only of the right of soil, and not of territory, which term has a technical sense, including jurisdiction.

Let it be added, that the treaty of peace, in the article which provides "that there should be no future confiscations nor prosecutions against any person or persons, by reason of the part which he or they might have taken in the war; and that no person should, on that account, suffer any future loss or damage, either in his person, liberty or property," did substantially what is made an objection to the treaty under consideration. It will not, I believe, be disputed, that it gave protection to all property antecedently owned, and not confiscated. Indeed, it is a question whether the stipulations cited, would not have affected, with regard to other rights than those of property, a great part of

what is regulated by the last treaty. Its provisions, in this particular, were, perhaps, in the main, unnecessary, further than to obviate a doubt which might have arisen from the suspension of the treaty, by the withholding of the posts.

Thus have I gone through every objection to the second article, which is in any degree colorable; and I flatter myself have shown, not only that the acquisition made by it is of great and real value, but that it stands as well as circumstances permitted, and is defensible in its details. I have been the more particular in the examination, because the assailants of the treaty have exerted all their ingenuity to discredit this article, from a consciousness, no doubt, that it is a very valuable item of the treaty; and that it was important to their cause, to envelope it in as thick a cloud of objection as they were able to contrive. As an expedient of party, there is some merit in the artifice; but a sensible people will see that it is merely artifice. It is a false calculation, that the people of this country can ever be ultimately deceived.

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The object of the third article is connected with that of the second. The surrender of the posts naturally drew with it an arrangement, with regard to inland trade and navigation. Such an arrangement, convenient in several respects, appears to be in some respects necessary. To restrain the Indians on either side of the line, from trading with the one party or the other, at discretion, besides the questionableness of the right, could not be attempted without rendering them disgusted and hostile. The truth of this seems to have influenced the conduct of Great Britain and France, while the latter was in possession of Canada. The 15th article of the treaty of peace of Utrecht, in the year 1713, allows free liberty to the Indians on each side, to resort for

trade to the British and French colonies. It is to be observed, too, that the Indians not only insist on a right of going to trade with whom they please, but of permitting whom they please to come to trade with them, and also to reside among them for that purpose. Thus, the southern and south-western Indians within our limits, maintain a constant intercourse with Spain, established on the basis of treaty—nor has their right to do it, been hitherto contested by the United States. Indeed, on what clear principle of justice could this natural right of trade, of a people not subject to our ordinary jurisdiction, be disputed? This claim, on their part, gives a corresponding claim to neighboring nations, to trade with them. Spain would think the pretension to exclude her inadmissible; and Great Britain would have thought the same, if she had found it her interest to assert the right of intercourse; views which would always be seconded by the Indians from regard to their own interest and independence. It was a point, therefore, which it much concerned the preservation of good understanding between the parties and with the Indians, to regulate on some equitable plan; and the more liberal the plan, the more agreeable to a natural course of things, and to the free participation of mutual advantages, the more likely was it to promote and prolong that important benefit.

In the second place, the expediency of some arrangement was indicated by the circumstance of the boundary line between the parties, running for an extent of sixteen hundred miles through the middle of the same rivers, lakes, and waters. It may be deemed impossible, from the varying course of winds and currents, for the ships of one party to keep themselves constantly within their own limits, without passing or transgressing those of the other. How, indeed, was the precise middle line of those great lakes to be always known?

It appears evident, that to render the navigation of these waters useful to, and safe for, both parties, it was requisite that they should become common. Without this, frequent forfeitures to enforce interdictions of intercourse might be incurred—and there would be constant danger of interference and controversy. It is probable, too, that when those waters are better explored in their

whole extent, it will be found that the best navigation of those lakes is sometimes on the one side, sometimes on the other, and that common convenience will, in this respect, also be promoted by community of right.

Again—It is almost always mutually beneficial for bordering territories to have free and friendly intercourse with each other. This relates not only to the advantages of an interchange of commodities for the supply of mutual wants, and to those of the reciprocal creation of industry connected with that interchange, but also to those of avoiding jealousy, collision, and contest, of preserving friendship and harmony. Proximity of territory invites to trade—the bordering inhabitants, in spite of every prohibition, will endeavor to carry it on;—if not allowed, illicit adventures take place of the regular operations of legalised commerce—individual interest leads to collusions to evade restraining regulations—habits of infracting the laws are produced—morals are perverted—securities, necessarily great, in proportion as they counteract the natural course of things, lay the foundation of discontents and quarrels. Perhaps it may be safely affirmed, that freedom of intercourse, or violent hatred and enmity, are the alternative in every case of contiguity of territory.

The maxims of the United States have hitherto favored a free intercourse with all the world. They have conceived, that they had nothing to fear from the unrestrained competition of commercial enterprise, and have only desired to be admitted to it on equal terms. Hence, not only the communication by sea has been open with the adjacent territories on our continent as well as with more distant quarters of the globe; but two ports have been erected on Lake Champlain for the convenience of interior commerce with Canada; and there is no restriction upon any nation, to come by the Mississippi to the only port which has been established for that side of the Union. These arrangements have excited neither blame nor criticism.

Our envoy, therefore, in agreeing to a liberal plan of intercourse with the British territories in our neighborhood, has conformed to the general spirit of our country, and to the general policy of our laws. Great Britain, in acceding to such a plan,

departed from her system of colonial monopoly, a departure which ought to be one recommendation of the plan to us; for every relaxation of that system paves the way for other and further relaxations. It might have been expected, also, that a spirit of jealousy might have proved an obstacle on the part of Great Britain; since, especially if we consider the composition of those who inhabit, and are likely to inhabit Canada, it is morally certain, that there must be, as the result of a free intercourse, a far greater momentum of influence of the United States upon Canada, than of Canada upon the United States. It would not have been surprising, if this jealousy had sought to keep us at a distance, and had counteracted the wiser policy of limiting our desires by giving us possession of what is alone to us truly desirable, the advantages of commerce, rather than of suffering our wishes to be stimulated and extended by privation and restraint.

New ideas seem of late to have made their way among us. The extremes of commercial jealousy are inculcated. Regulation, restriction, exclusion, are now with many the favorite topics—instead of feeling pleasure, that new avenues of trade are opened, a thousand dangers and mischiefs are pourtrayed when the occasion occurs. Free trade with all the world seems to have dwindled into trade with France and her dominions. The love-sick partisans of that country appear to regard her as the epitome of the universe, to have adopted for their motto, "All for love, and the world well lost."

These new propensities towards commercial jealousy, have been remarkably exemplified with respect to the article immediately under consideration. Truly estimated, it is a valuable ingredient in the treaty; and yet there is, perhaps, no part of it which has been more severely reprobated. It will be easy to show that it has been extremely misrepresented, and that what have been deemed very exceptionable features, do not exist at all.

We will first examine what the article really does contain, and afterwards what are the comparative advantages likely to result to the two countries.

The main stipulation is, that "it shall at all times be free

to his majesty's subjects, and to the citizens of the United States —and also to the Indians dwelling on either side of the boundary line, freely to pass and repass, *by land and inland navigation*, into the respective territories and countries of the two parties on the continent of America (the country within the limits of the Hudson's Bay company only excepted), and to navigate all the lakes, rivers, and waters thereof, and freely to carry on trade and com merce with each other."

The subject matter of this stipulation is plainly *inland trade and commerce*, to be carried on *by land passage, and inland navigation.* This appears, 1st, from the terms of the article. The subjects and citizens of the two parties, and also the Indians dwelling on each side of the boundary line, are freely to pass and repass. In what manner? *by land* and *inland navigation:* to what places? into the respective territories and countries of the two parties, on the continent of America (the country of the Hudson's Bay company only excepted). They are also to navigate all the lakes, rivers, and *waters thereof*, and freely to carry on trade and commerce with each other. This right to navigate lakes, rivers, and waters, must be understood with reference to inland navigation; because this gives it a sense conformable with the antecedent clause, with which it is immediately connected, as part of a sentence; because the right to *pass* and *repass*, being expressly restricted to land and inland navigation, it would not be natural to extend it by implication, on the strength of an ambiguous term, to passage by sea, or by any thing more than inland navigation; because the lakes and rivers have direct reference to inland navigation, showing that to be the object in view; and the word "waters," from the order in which it stands, will, most consistently with propriety of composition, be understood as something less than lakes and rivers, as ponds, canals, and those amphibious waters, to which it is scarcely possible to give a name; and because the waters mentioned are "waters thereof," that is, waters of the territories and countries of the two parties on the continent of America; a description which cannot very aptly be applied to the sea, or be supposed to include navigation by sea to the United States, or

from them to the British territories. It is true, that nations, for various purposes, claim and exercise jurisdiction over the seas immediately adjacent to their coasts; yet this is subject to the common right of nations to the innocent use of those seas for navigation; and it is not, *prima facie*, presumable, that two nations, speaking of the waters of each other, would mean to give this appropriate denomination to waters, in which both claimed some common right.—The usual description of such waters in treaties is, "the *seas near* the countries," &c.—But were it otherwise, still the navigating from the *open* sea into those waters, could not be within the permission to navigate those waters, and might be prohibited.

The above construction is confirmed by the general complexion of the treaty. It is the manifest province of the eighteen articles, which succeed the first ten, to regulate external commerce and navigation. The regulations they contain, are introduced thus, by the 11th article: "It is agreed between his Majesty and the United States of America, that there shall be a reciprocal and entirely perfect liberty of navigation and commerce, between their respective people, in the manner, under the limitations, and on the conditions specified in the following articles." Then follow articles, which provide fully and distinctly for trade and navigation between the United States and the British West Indies, between the Asiatic dominions of Great Britain and the United States; and lastly, between the European dominions of Great Britain and the United States. These eighteen articles properly constitute the treaty of commerce and navigation between the two countries. Their general scope, and some special provisions which they contain, prove that the object of the third article is local and partial; that it contemplates, exclusively, an interior commerce by land and inland navigation (except as to the Mississippi,) and particularly that it does not reach at all our Atlantic ports. An instance of one of the special provisions alluded to, will be cited in the further examination of this article.

In opposition to this construction, much stress is laid upon the provisions which immediately succeed the clauses that have

been quoted. They are in these words; "But it is understood, that this article does not extend to the admission of vessels of the United States into the seaports, harbors, bays, or creeks of his Majesty's said territories, nor into such parts of the rivers in his said territories as are between the mouth thereof and the highest port of entry from the sea, except in small vessels trading bona fide between Montreal and Quebec: nor to the admission of British vessels from the sea into the rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea!" The last, it is said, contains an implication, that under this article, British vessels have a right to come to our highest ports of entry for foreign vessels from the sea, while we are excluded from the seaports of the British territories on this continent.

But this is altogether an erroneous inference. The clauses last cited are inserted for greater caution, to guard expressly against any construction of the article by implications more or less remote; contrary to the actual regulations of the parties, with regard to external commerce and navigation. Great Britain does not now permit a trade by sea to Nova Scotia and Canada. She therefore declares that the article shall not be deemed to contravene this regulation. The United States now permit foreign vessels to come to certain ports of entry from the sea, but exclude them from other more interior ports of entry, to which our own vessels may come.* It is therefore declared on their part, that the article shall not be construed to contravene this regulation. This was the more proper, as the right of inland navigation might have given some color to the claim of going from an outer to an inner port of entry. But this negative of an implication, which might have found some color in the principal provision, can never be construed into an affirmative grant of a very important privilege, foreign to that principal provision. The main object of the article, it has been seen, is trade by land and inland navigation. Trade and navigation by sea, with our

* An example of this is found in the State of New-York. Foreign vessels can only enter and unlade at the city of New-York; vessels of the United States may enter at the city of Hudson, and unlade there and at Albany.

seaports, is an entirely different thing. To infer a positive grant of this privilege, from a clause which says, that the right of inland navigation shall not be construed to permit vessels coming from the sea, to go from the ports of entry, to which our laws now restrict them, to more interior ports, would be contrary to reason, and to every rule of sound construction. Such a privilege could never be permitted to be founded upon any thing less than a positive and explicit grant. It could never be supported by an implication drawn from an article relative to a local and partial object, much less by an implication drawn from the negative of another implication. The pretension, that all our ports were laid open to Great Britain by a covert and side-wind provision, and this without reciprocity, without a right of access to a single seaport of the other party in any part of the world, would be too monstrous to be tolerated for an instant. The principles of equity between nations, and the established rules of interpretation, would unite to condemn so great an inequality, if another sense could possibly be found for the terms from which it might be pretended to be deduced. It would be in the present case the more inadmissible, because the object is embraced and regulated by other parts of the treaty on terms of reciprocity.

The different mode of expression, in the clause last cited, when speaking of the British territories, and when speaking of the United States, has furnished an argument for the inference which has been stated. But this difference is accounted for by the difference in the actual regulations of the parties, as described above. The object was on each side to *oust* an implication interfering with those regulations. The expressions to effect it were commensurate with the state of the fact on each side; and consequently do not warrant any collateral or special inference.

The only positive effect of these clauses is to establish, that the navigation from Montreal to Quebec shall be carried on in what are called "small vessels, trading bona fide between Montreal and Quebec." In determining their sense, it merits some observation, that they do not profess to *except from* the operation of the general provisions of the article the *seaports*, &c., of the

British territories; but declare, that it is understood that those provisions *do not extend to* them. This is more a declaration that the antecedent provisions were not so broad as to comprehend the cases, than an exception of the cases from the operation of those provisions.

Those who are not familiar with laws and treaties, may feel some difficulty about the position, that particular clauses are introduced only for greater caution, without producing any new effect; but those who are familiar with such subjects, know, that there is scarcely a law or a treaty which does not offer examples of the use of similar clauses; and it not unfrequently happens, that a clear meaning of the principal provision is rendered obscure by the excess of explanatory precaution.

The next clause of this article is an exception to the general design of it, confirming the construction I have given. "The river Mississippi shall, however, according to the treaty of peace, be entirely open to both parties; and it is further agreed, that all the ports and places on its eastern side, to which soever of the parties belonging, may freely be resorted to and used by both parties, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of his majesty in Great Britain."

If the general provision gives access to all our ports, which must be the doctrine, if it gives access to our Atlantic ports, then it would equally have this effect with regard to the Mississippi. But this clause clearly implies the contrary, not only by introducing a special provision for the ports of the Mississippi, but by introducing it expressly, as a further or additional agreement; the words are, "*it is further agreed*, &c., and these ports are to be enjoyed by each party, *in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of his majesty in Great Britain.* This reference to our Atlantic ports, coupling them with the ports of Great Britain, shows that the Mississippi ports are to be regulated by a rule or standard different from the ports for that inland navigation, which is the general object of the article; else, why that special reference? why not have stopped at the words "*used by both parties?*" If it be

said, that the reference to our Atlantic ports implies, that they are within the purview of the article, let it be observed, that the same argument would prove that the ports of Great Britain are also within its purview, which is plainly erroneous; for the main provisions are expressly confined to the territories of the parties on this continent. The conclusion is, that the reference is to a standard, out of the article, and depending on other parts of the treaty.

It may be useful to observe here, that the Mississippi ports being to be used only in as ample, and not in a more ample manner, than our Atlantic ports, and the ports of Great Britain, will be liable at all times to all the regulations, privileges, and restrictions of the ports with which they are assorted.

The next clause is a still further refutation of the construction which I oppose.

"All goods and merchandise, *whose importation into his majesty's said territories in America shall not be entirely prohibited*, may freely, for the purposes of commerce, be carried into the same, in the *manner aforesaid*, by the citizens of the United States; and such goods and merchandise shall be subject to *no higher or other duties than would be payable by his majesty's subjects on the importation of the same from Europe, into the said territories:* and in like manner, all goods and merchandise, *whose importation into the United States shall not be wholly prohibited*, may freely, *for the purposes of commerce*, be carried into the same, *in the manner aforesaid, subject to no higher or other duties than would be payable by the citizens of the United States*, on the importation of the same in *American vessels into the Atlantic ports of the said States:* and all goods not prohibited to be exported from the said territories respectively, may, in like manner, be carried out of the same by the two parties respectively, paying duty as aforesaid."

The words, "*in the manner aforesaid*," occur twice in these clauses, and their equivalent, "*in like manner*," once. What is the meaning of this so often repeated phrase? it cannot be presumed, that it would have been inserted so frequently without having to perform some office of consequence. I answer, that it is evidently the substitute for these other words of the main pro-

vision, "*by land and inland navigation.*" This is "*the manner aforesaid.*" This is the channel, through which goods and merchandises passing, would be subject to no other or higher duties than would be payable in the British territories by British subjects, if imported from Europe; or in the territories of the United States, by citizens of the United States, if brought by American vessels into our Atlantic ports. No other reasonable use can be found for the terms. If they are denied this sense, they had much better been omitted, as being not only useless, but as giving cause to suppose a restriction of what, it is pretended, was designed to be general—a right of importing in every way, and into all parts of the United States, goods and merchandise, if not entirely prohibited, on the same duties as are payable by our own citizens when brought in our own vessels.

These words, "whose importation into the United States shall not be *entirely* prohibited," is a further key to the true sense of the article. They are equivalent to these other words, "whose importation *into all parts* of the United States shall not be prohibited."—The design of this clause is to prevent importation, through the particular channels contemplated by the article, being obstructed by a partial or by any other than a general prohibition. As long as certain goods may be introduced into the United States through the Atlantic ports, they may also be brought into them through the channels designated by this article, that is, by land and inland navigation. The making a prohibition in the given case to depend on a general prohibition, is conclusive to prove, that the article contemplates only *particular channels.* On any other supposition, the clause is nonsense. The true reading, then, of this part of the article, must be as follows: "Goods and merchandise, whose importation *into all parts* of the United States shall not be prohibited, may freely, for the purposes of commerce, be carried into the same, *in manner aforesaid,* that is, *by land and inland navigation,* from the territories of his majesty on the continent of America."

There are still other expressions in the article, which are likewise an index to its meaning. They are these, "*would be payable* by the citizens of the United States, on the *importation of the same*

in American vessels into the Atlantic ports of the said states." This reference to a rate of duties, which would be payable on importation into the Atlantic ports, as a rule or guide for the rate of duties, which is to prevail in the case meant to be comprehended in the article, is full evidence that importation in the Atlantic ports is not included in that case. The mention of importation in American vessels, confirms this conclusion, as it shows that the article itself contemplates, that the discrimination made by our existing laws may continue.

But the matter is put out of all doubt by those parts of the fifteenth article which reserve to the British government the right of imposing such duty as may be adequate to *countervail the difference* of duty, *now payable* on the importation of European and Asiatic goods, when imported into the United States in British and American vessels; and which stipulate, that "the United States will not INCREASE *the now subsisting difference* between the duties payable on the importation of any articles in British or American vessels."

This is a demonstration that the treaty contemplates, as consistent with it, a continuance of the present difference of duties on importations in American and British vessels; and consequently, that the third article, which stipulates equal duties, as to the cases within it, does not extend to importations into our Atlantic ports, but is confined to importations by land and inland navigation. Though this article be of temporary duration, yet as an evidence of the sense of the parties, it will always serve as a rule of construction for every part of the instrument.

These different views of the article establish, beyond the possibility of doubt, that, except with regard to the Mississippi, inland trade and navigation are its sole objects—that it grants no right or privilege whatever in our Atlantic ports—and that with regard to the ports of the Mississippi, it only establishes this principle, that Great Britain shall always enjoy there the same privileges which by treaty or law she is allowed to have in our Atlantic ports.

I remark incidentally, for a purpose which will appear hereafter, that as far as this article is concerned, we are free to pro-

hibit the importation into the United States at large, of any British article whatever, though we cannot prohibit its importation *partially*, that is, merely from her territories in our neighborhood, by land or inland navigation; but we may prohibit the importation by sea from those territories; *nor is there any other part of the treaty by which this is prevented.*

The remaining clauses of this article establish the following points: "That no duty of entry shall be levied by either party on peltries brought by land or inland navigation, into the respective territories;" that Indians, passing and repassing with their own goods, shall pay no impost or duty upon them; but goods in bales, or other large packages, unusual among Indians, shall not be considered as their goods; that tolls and rates of ferriage shall be the same on both sides as are paid by natives—that no duties shall be paid by either party on the mere transit of goods across portages and carrying places from one part to another of the territory of the same party; that the respective governments will promote friendship, good neighborhood, and amicable intercourse, by causing speedy and impartial justice to be done, and necessary protection to be extended to all who may be concerned therein.

I shall conclude this paper with an observation or two on the meaning of the terms, inland navigation. These terms have no technical meaning defined in the laws of either country, nor have they any precise meaning assigned by the law of nations. They, however, *ex vi termini*, exclude navigation from the sea; and as a general rule, I should say, that inland navigation begins there, where sea navigation ends. Where is this? I answer, at the ports of entry from the sea. By the laws of Great Britain and of the United States, all rivers are arms of the sea as far as the tides flow. It would be a consequence of this principle, that sea navigation would reach to the head of tide water. But some more obvious and notorious rule ought to govern the interpretation of national compacts. The ports of entry from the sea are conceived to be the proper rule.

In the case under consideration, the general spirit of the article may require, that all the waters which divide the territo-

ries of the parties should be in their whole extent common to both. As to other communicating waters, accessible under the article, the reciprocal limit of the right will be the ports of entry from the sea. This is to be understood with the exception of the Mississippi, to the ports of which, access from the sea is granted under the qualification which has been pointed out.

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The foregoing analysis of the third article, by fixing its true meaning, enables us to detect some gross errors, which have been principal sources of prejudice against it. One of these is, that the article gives to the other party a right of access to all our ports, while it excludes us from the ports of the British territories in our neighborhood. It has been clearly shown, that it gives no right of access to any one of our Atlantic ports, and that it gives only a qualified and conditional access to the ports which we may have on the Mississippi, to be regulated by the privileges at any time allowed by law or compact in our Atlantic ports, and liable to cease with the cessation of those privileges. The charge, therefore, of want of reciprocity in this particular, vanishes, and with it all the exceptionable consequences which have been the fruit of the error. Such is the assertion of DECIUS, that a British trader may set out from Canada, traverse our lakes, rivers and waters to New-York, and thence to Philadelphia, while we are precluded from the navigation of the St. Lawrence, and other British rivers lower than the highest ports of entry from the sea. It would be an indulgent construction of the article, not to stop the British trader at Hudson, as the highest port of entry from the sea, and the boundary of inland navigation; but he could certainly have no claim of right under it, to go from New-York to Philadelphia, because he must necessarily go by sea to arrive at the first place, and no such permission

is stipulated by the article. Such, also, is the assertion of CATO, that Great Britain is admitted to all the advantages of which our Atlantic rivers are susceptible. The rivers, upon which no part of their territory borders, and which their vessels can only approach by sea, are certainly excepted.

Another of the errors referred to, is this, that goods and merchandise may, under this article, be imported into any *part* of the United States, upon the same duties which are now payable when imported by citizens of the United States, and in vessels of the United States. It has been clearly proved, that there is no pretence for this position, and that equality of duties only applies to importations from the British territories, in our neighborhood, by land and inland navigation.

CATO, DECIUS, and other writers against the treaty, have fallen into this strange error, and have founded upon it much angry declamation. The first, however, embarrassed in his construction, by the provision which reserves to Great Britain the right of laying countervailing duties, endeavors to escape from it by distinguishing goods imported for the Indian trade, and those imported for other uses. Whatever may be the case with regard to the latter, the former, he is convinced, are certainly entitled to admission into our Atlantic ports, on the privileged rights of duty; though he is very naturally perplexed to see how the discrimination could be maintained in practice. But where does he find room for this distinction? Not in the provision respecting countervailing duties, for that is general—not in the clause of the third article, to which he gives the interpretation, for that is directly against his distinction. The goods and merchandise, for the privileged importation of which it provides, are restricted to no particular object—have no special reference to Indian more than to other trade: on the contrary, they are expressly to be imported for "the purposes of commerce" at large; so that in the cases in which they are privileged, they are equally so, whether it be for a trade with our citizens or with Indians. The distinction, therefore, only proves the embarrassment of its inventor, without solving the difficulty. A curious assertion has been made on this article of duties. It has been said, that while

we are obliged to admit British goods on the same duties with those paid by our own citizens, or importation in our own vessels, Great Britain, under the right to lay countervailing duties, may incumber us with an additional ten per cent. Can any thing be more absurd than the position, that the right to lay *countervailing* duties exists in a case, where there is no difference of duty to *countervail?* The term is manifestly a relative one, and can only operate where there is something on our side to be countervailed or counterbalanced, and in an exact ratio to it. If it be true, that a very high law character is the writer of CATO, we cannot but be surprised at such extreme inaccuracy.

Other errors, no less considerable, will appear in the progress of the examination; but it will facilitate the detection of these, and tend to a more thorough understanding of the article, to state in this place some general facts, which are material in a comparison of the advantages and disadvantages of the article, to the respective parties.

1st. The fur trade within our limits is, to the fur trade within the British limits, as one to seven, nearly; that is, the trade with the Indians, on the British side of the boundary line, is about seven times greater than the same trade on our side of that line. This fact is stated as the result of repeated inquiry from well informed persons for several years past. It will not appear extraordinary to those who recollect how much the Indians on our side are circumscribed in their hunting-grounds, and to what a degree they are reduced in numbers by the frequent wars, in which they have been engaged with us; while the tribes on the British side of the line are not only far more numerous, but enjoy an immense undisturbed range of wilderness. The more rapid progress of settlement on our side than on the other, will fast increase the existing disparity.

2d. Our communication with the sea is more easy, safe, and expeditious, than that of Canada, by the St. Lawrence. Accordingly, while our vessels ordinarily make two voyages in a year, to and from Europe, the British vessels, in the Canada trade, are, from the course of the seasons, and the nature of the navigation, confined to one voyage in a year. Though hitherto,

from temporary circumstances, this difference has not made any sensible difference in the price of transportation; yet in its permanent operation, it is hardly possible that it should not give us a material advantage in the competition for the supply of European goods to a large part of Canada, especially that which is denominated Upper Canada. The city of Hudson, distant 124 miles from the city of New-York, is as near to the junction of the river Cataraquy and Lake Ontario, as Montreal, which last is near four hundred miles distant from the mouth of the St. Lawrence. When the canals, now in rapid execution, are completed, there will be a water communication the whole way from the city of Hudson to Ontario.

3d. The supply of East India goods to Canada, is likely to be always easier and cheaper through us, than in any other way. According to the present British system, Canada is supplied through Britain. It is obvious how much the charges of this double voyage must enhance the prices of the articles, when delivered in Canada. A direct trade between the East Indies and Canada, would suppose a change in the British system, to which there are great obstacles; and even then, there are circumstances which would secure to us an advantageous competition. It is a fact, which serves to illustrate our advantages, that East India articles, including teas, are, upon an average, cheaper in the United States than in England.

The facts demonstrate that a trade between us and the British territories in our neighborhood, upon equal terms as to privilege, must afford a balance of advantages on our side. As to the fur trade, for a participation in one eighth of the whole, which we concede, we gain a participation in seven eighths which is conceded to us. As to the European and East India trade, we acquire the right of competition upon equal terms of privilege, with real and considerable advantages of situation.

The stipulation with regard to equal duties, was essential to the preservation of our superiority of advantages in this trade, while it would not interfere with the general policy of our regulation, concerning the difference of duties on goods imported in our own and in foreign bottoms; because the supplies which can

come to us through Canada, for the reasons already given, must be inconsiderable; because, also, distance would soon countervail, in expenses of transportation, the effect of the difference of duties in our market; and because, in the last place, this difference is not very sensible, owing to the large proportion of goods which are imported in the names of our own citizens. I say nothing here of the practicability, on general grounds, of long maintaining with effect this regulation.

Is it not wonderful, considering the real state of the trade, as depending on locality, that the treaty should be charged with sacrificing the fur trade to the British? If there be any sacrifice, is it not on their side; when the fact is, that the quantity of trade in which they admit us to equal privileges is seven times greater than that in which we admit them to equal privileges?

The arguments against the treaty on this point, are not only full of falsity, but they are in contradiction with each other.

On the one hand, it is argued that our communication from the sea, with the Indian country, being much easier than by the St. Lawrence, we could furnish English goods cheaper, and of course could have continued the Indian trade in its usual channel, even from the British side of the lakes; nor could they have prevented it, without giving such disgust to the Indians, as would have made them dangerous neighbors. On the other hand, it is argued, that from superiority of capital, better knowledge of the trade, a better established connection of customers, the British will be able to supplant us, even in our own territories, and to acquire a monopoly of the whole fur trade.

Propositions so opposite cannot all be true. Either the supposed faculty of supplying English goods cheaper, which, it is said, would give us a command of the Indian trade, even on the British side of the lakes, not in the power of the British to prevent, overbalances the advantages which are specified on the other side, or it does not. If it does not, then it is not true, that it could draw to us the trade from the British side of the lakes. If it does, then it is not true, that the British can supplant us in the trade on either side the lakes; much less that they can obtain a monopoly of it on both sides.

Besides, if it be true that the British could not prevent our trading with the Indians on their side, without giving them such disgust as to make them dangerous to their neighbors; why is it not equally true, that we could not prevent their trading with the Indians on our side, without producing a similar effect? And if they have really a superiority of advantages, why would they not, on the principle of this argument, attract and divert the trade from us, though a mutual right to trade with the Indians in each other's territories had not been stipulated?

The difficulty of restraining the Indians from trading at pleasure, is an idea well founded, as has been admitted in another place. But there result from it strong arguments in favor of reciprocation of privileges in the Indian trade, by treaty. One of them, its tendency to preserve peace and good understanding, has been already noticed; another arises from the consideration, that it will probably be the policy of the British to maintain larger military establishments on their frontier than we shall think eligible on ours, which will render it proportionably more easy to them to restrain their Indians, than it will be to us to restrain ours. This greater difficulty of executing restraints on our side, is a powerful reason for us to agree, mutually, to throw open the door.

It will not be surprising if, upon some other occasion, the adversaries of the treaty should abandon their own ground, and instead of saying the treaty is faulty, for what it stipulates on this point, should affirm merely that it has no merit on this account, since it only does what the disposition of the Indians would have brought about without it. But it is always a merit to divest an advantageous thing of cause of dispute, and to fix, by amicable agreement, a benefit which otherwise would be liable to litigation, opposition, and interruption.

As to relative advantages for carrying on trade, the comparison ought to be made with caution. That which has been stated on our side, namely, greater facility in conveying the materials of the trade from Europe to the scene where it is to be carried on, is a real one, and in process of time may be expected to make itself to be felt; yet hitherto, as before observed, it has had no sensible effect.

Of the advantages which have been stated as belonging to the other side, there is but one which has substance, and this is previous possession of the ground. But even this, from the very nature of it, is temporary. With our usual enterprise and industry, it will be astonishing if we do not speedily share the ground to the full extent of our relative advantages.

As to superiority of capital, it amounts to nothing. It has been seen, that the capital requisite for the whole trade is small. From a hundred to a hundred and fifty thousand pounds sterling would be a high statement. The whole of this, if we were to monopolize the entire trade, could not create a moment's embarrassment to find it, in the opinion of any man who attends to the great pecuniary operations which are daily going on in our country. But that very capital which is represented as our rival, could be brought into action for our benefit in this very trade. The solution is simple. Our credit will command it in obtaining the foreign articles necessary for the trade, upon as good terms as the British merchants who now carry it on. The same objection of superiority of capital may with as much reason be applied to any other branch of trade between us and Great Britain. Why does it not give her a monopoly of the direct trade between her European dominions and the United States? The argument, if valid, would prove that we ought to have no commerce, not only with Great Britain, but with any nation which has more commercial capital than ourselves.

As to superior knowledge of the particular branch of business, there is still less force in that argument. It is not a case of abstruse science or complicated combination. And we are in no want of persons among us, who are experimentally acquainted with the subject.

As to customers for the proceeds of the trade, we should stand upon as good a footing as the British merchants. What we did not want for our own consumption, might be sent upon equal terms to the very markets to which they send theirs; and to others which might be found preferable, because less well supplied with the kind of articles.

As to whatever may depend on enterprise, we need not fear

to be outdone by any people on earth. It may almost be said, that enterprise is our element.

It has been alleged, that our trade with the Indians would be interrupted by bad seasons and occasional wars, while that of Great Britain would be steady and uniform. As to the casualties of seasons, it is evident they must fall upon Great Britain as much as upon us, unless we suppose the elements in conspiracy against us; and as to wars, the possession of the posts would essentially change our situation, and render it peculiarly advantageous for preventing or repressing hostilities; so that with equally good management, our territories would not be more exposed than the British.

But the intrigues of the British traders residing among our Indians, would excite them to hostility. It could not be the private interest of the traders to do this; because, besides being amenable to punishment, if discovered—besides, that both the traders and the Indians within our limits, by the possession of the posts, would be under our control—wars interrupt of course the hunting of the Indians, and so destroy their means of trading.

As to Great Britain, she never could have had but one interest to prompt Indian hostilities, that was, to induce the United States to relinquish a part of their boundary. The restitution of the posts will put an end to this project. In regard to trade, she and her traders will have a common interest with us, and our traders, to keep all the Indians at peace, for the reason assigned above. This interest will be the stronger, because the best communication even with her own Indians, will be partly through our territory; and it would be impossible that it should not be impeded and interrupted by the operations of war between us and the Indians. In fact, under the circumstance of common privileges, there is every possible link of common interest between us and Great Britain in the preservation of peace with the Indians.

In this question of danger to our peace by the British participation in the trade with our Indians, the difficulty of restraining the Indians from trading with whom they please (which is admitted by the argument of both sides) is a very material con-

sideration. Would there not be greater hazard to our peace from the attempts of the British to participate in a trade from which we endeavored to exclude them, seconded by the discontents of the Indians, than from any dispositions to supplant us, when allowed a free competition, when no cause of dissatisfaction was given to the Indians, and when it was certain, that war must interfere with their means of carrying on the trade? The security for our peace appears to be much greater in the latter, than in the former state of things.

A suspicion is also suggested, that Great Britain, without exciting war, will indirectly trammel and obstruct our trade. To objections which suppose a want of fair dealing in the other party, it is very difficult to answer. All that a treaty can do, is to establish principles which are likely to operate well, if well executed. It is no objection to its merits, that the benefits aimed at may be frustrated by ill faith. The utility of any compact between nations must presume a sincere execution. The reverse may disappoint the best conceived plan: and the security against it must be the mutual interest to perform, and the power of retaliation. If Great Britain acts with infidelity or chicanery towards us, we must retract the privileges granted on our side.

Another objection which is made, is, that while the British would have a right to reside among us, to hire houses and warehouses, and to enjoy every convenience for prosecuting the trade systematically, we should not be entitled to similar privileges with them, having only a right to pass "like pedlars with our shops upon our backs." These are the expressions of CATO.

The position is founded on that clause of the British act of navigation, which forbids any but a natural born or naturalized subject to exercise the occupation of a merchant or factor, in any of the British dominions in Asia, Africa, and America.

In the first place, it is to be observed, that as far as the article under discussion is singly concerned, there is no pretence to say, that one party has greater rights as to residence than the other. If, therefore, Great Britain can prevent our citizens residing in their territories in our neighborhood, we are free by this article to apply to them a similar exclusion. And any right

of residence which may be claimed under any other part of the treaty, will be temporary.

In the second place, the prohibition of residence in the act of navigation, proceeds on the ground of excluding foreigners from carrying on trade in the territories to which it extends. But the third article expressly gives us a right freely to carry on trade and commerce with the British territories on this continent, a right which necessarily includes the privilege of residing as merchants and factors. For wherever an END is granted, the *usual* and *proper means* of enjoying it, are implied in the grant. Residence is a usual and necessary mean of freely carrying on trade. Without it, the right to trade becomes essentially nugatory. This reasoning has peculiar force in relation to inland trade. And it agrees with decisions at common law, and with the opinion of Lord Coke, who tells us that "of a house for *habitation* an alien merchant may take a *lease for years, as incident to commerce; for without habitation he cannot merchandise or trade.*" This, among other things, he informs us, was resolved by all the judges assembled for that purpose, in the case of Sir James Croft, in the reign of queen Elizabeth; and we learn from it, that the right to hire houses and warehouses is derived from the right to trade, as its incident. The same principle, *in toto*, has been recognized in other cases.

The whole of the article is an innovation upon the British act of navigation. Being abrogated as to the principal thing, there is no difficulty in supposing it so as to incidents; on the other hand, to pretend to exclude us from the right of residence, could not be deemed a fair execution of the article. Hence we find, that the want of reciprocity in this particular, also fails, and with it the supposed disadvantage on our side in the supposed competition for the trade.

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The remaining allegations, in disparagement of the third article, are to this effect:—1. That the exception of the country of the Hudson's Bay company, owing to its undefined limits, renders the stipulations in our favor, in a great measure, nugatory. 2. That the privileges granted to Great Britain in our Mississippi ports, are impolitic, because without reciprocity. 3. That the agreement to forbear to lay duties of entry on peltries, is the surrender, without equivalent, of a valuable item of revenue, and will give the British the facility of carrying on their fur trade through us, with the use of our advantages. 4. That the articles, which will be brought from Europe into Canada, coming duty free, can be afforded cheaper than the same articles going thither from us, charged with a heavy duty on their importation into the United States, and with the expense of a long transportation by land, and inland navigation. 5. That the population of Canada, which, by a census in 1784, amounted only to 123,082 souls, is too small to render the supply of European and Asiatic commodities, through us, of so much importance as to bear any comparison with the loss by the sacrifice of the fur trade. 6. That the intercourse to be permitted with the British territories, will facilitate smuggling, to the injury of our revenue. 7. That the much greater extent of the United States than of the British territories, destroys real reciprocity in the privileges granted by this article, giving, in fact, far greater advantages than are received. These suggestions will be discussed in the order in which they are here stated:—

1. It is true, that the country of the Hudson's Bay company is not well defined. Their charter, granted in 1670, gives them "the sole trade and commerce of and to all the seas, bays, streights, creeks, lakes, rivers and sounds, in whatsoever latitude they shall be, that lie within the entrance of the streights commonly called Hudson's Streights, together with all the lands, countries, and territories, upon the coasts and confines of the said

seas, streights, bays, &c., *which are now actually possessed by any of our subjects, or by the subjects of any other Christian prince or state.*"

To ascertain their territorial limits, according to charter, it would be necessary to know what portion of country, at the time of the grant, was *actually possessed* by the subjects of Great Britain, or of some other Christian prince or state; but though this be not known, the general history of the country, as to settlement, will demonstrate, that it could not have extended far westward, certainly not to that region which is the scene of trade in furs, commonly called the north-west trade, carried on by the Canada company from Canada; the possession of which, as far as possession exists, is recent. We learn from a traveller who has lately visited that region, that one of this company's establishments is in lat. 56, 9, N. long. 117, 43, W., that is, about 20 degrees of longitude westward of the Lake of the Woods; and it is generally understood, that the entire scene of the trade of this company is westward of the limits of the Hudson's Bay company.

Canada, on the north, is bounded by the territories of the Hudson's Bay company. This is admitted by the treaty of Utrecht, and established by the act of parliament in 1774, commonly called the Quebec act. The treaty of Utrecht provides for the settlement of the boundaries by commissioners. I have not been able to trace whether the line was ever actually so settled; but several maps lay down a line as the one settled by the treaty of Utrecht, which runs north of the Lake of the Woods.

In a case thus situated, the United States will justly claim, under the article, access to all that country, the trade of which is now carried on through Canada. This will result both from the certainty that there were no actual possessions, at the date of the charter, so far interior, and from the fact of the trade being carried on through a different channel, by a different company, under the superintendence and protection of a different government, that of Canada. It may be asked, why was the article embarrassed by the exception of the country of the Hudson's Bay company? The answer is this, that the charter of this company gives to it a monopoly within its limits, and, therefore, a

right to trade there could not have been granted, with propriety, to a foreign power, by treaty. It is true that it has been questioned, whether this monopoly was valid against British subjects, seeing that the charter had not been confirmed by act of parliament. But besides that this doubt has been confined to British subjects, it would appear, that, in fact, the company has enjoyed the monopoly granted by its charter, even against them, and with at least the implied approbation of parliament. In the year 1749, petitions were preferred to the House of Commons, by different trading towns in England, for rescinding the monopoly, and opening the trade. An inquiry was instituted by the house. The report of its committee was favorable to the conduct and pretensions of the company, and against the expediency of opening the trade; and the business terminated there.

This circumstance of there being a monopoly, confirms the argument drawn from the fact, that the north-west trade is carried on through Canada by the Canada company; a decisive presumption, that the scene of that trade is not within the country of the Hudson's Bay company, and is, consequently, within the operation of the privilege granted to us.

Though it will be partly a digression, I cannot forbear, in this place, to notice some observations of Cato, in his 10th number. After stating, that in 1784 the peltry from Canada sold in London for £230,000 sterling, he proceeds to observe, that, excluding the territories of the Hudson's Bay company, nine-tenths of this trade is within the limits of the United States; and though, with studied ambiguity of expression, he endeavors to have it understood, that nine-tenths of the trade which yielded the peltry, that sold for £230,000 sterling in 1784, was within our territories. It is natural to ask, how he has ascertained the limits of the Hudson's Bay company (which, at other times, is asserted, by way of objection to the article, to be altogether indefinite) with so much exactness as to be able to pronounce what proportion, if any, of the trade carried on through Canada may have come from that country, towards the calculation which has led to the conclusion, that nine-tenths of the whole lies within our limits? The truth is indubitably and notoriously, that whether any or whatever

part of the peltry exported from Canada may come from the country of the Hudson's Bay company, seven-eighths* of the whole trade which furnishes that peltry, has its source on the British side of the boundary line. It follows, that if it were even true, that only one-tenth of the whole lay in that part of the British territory, which is not of the Hudson's Bay company, inasmuch as only one-seventh of it lies within our limits, the result would be, that the trade, in which we granted an equal privilege, was to that in which a like privilege is granted to us, as one-seventh to one-tenth, and not, according to Cato, as nine to one. This legerdemain, in argument and calculation, is really too frivolous for so serious a subject. Or, to speak more properly, it is too shocking, by the spirit of deception which it betrays. Cato has a further observation, with regard to the trade with the Indians, in the vicinity of the Mississippi, and from that river into the Spanish territories. The product of all this trade, he says, must go down the Mississippi, and, but for the stipulation of the third article, would have been exclusively ours; because, "by the treaty of Paris, though the British might navigate the Mississippi, yet they did not own a foot of land upon either of its banks; whereas the United States possessing all the Indian country, in the vicinity of that river and the east bank for many hundred miles, could, when they pleased, establish factories and monopolize that commerce." This assertion, with regard to the treaty of Paris, is in every sense incorrect; for the seventh article of that treaty, establishes as a boundary between the dominions of France and his Britannic majesty, "a line drawn along the middle of the river Mississippi, from its source to the river Iberville, and from thence by a line drawn along the middle of this river and the Lakes Maurepas and Pont Chartrain to the sea," and cedes to his Britannic majesty all the country on the east side of the Mississippi. By the treaty of Paris then, his Britannic majesty owned all, except the town and island of New Orleans, the territory on the east side of the Mississippi, instead of not having a foot of land there.

* Some statements rate it between six-eighths and seven-eighths.

What part of this territory does not still belong to him, is a point not yet settled. The treaty of peace between the United States and Great Britain, supposes that part will remain to Great Britain; for one line of boundary between us and her, designated by that treaty, is a line due west from the Lake of the Woods to the Mississippi. If, in fact, this river runs far enough north to be intersected by such a line, according to the supposition of the last mentioned treaty, so much of that river, and the land upon it, as shall be north of the line of intersection, will continue to be of the dominion of Great Britain. The lately-made treaty, not abandoning the possibility of this being the case, provides for a survey to ascertain the fact; and in every event, the intent of the treaty of peace will require, that some closing line, more or less direct, shall be drawn from the Lake of the Woods to the Mississippi. The position, therefore, that Great Britain had no land or ports on the Mississippi, takes for granted, what is not ascertained, and of which the contrary is presumed by the treaty of peace.

The trade with the Indian country on our side of the Mississippi, from the Ohio to the Lake of the Woods (if that river extends so far north), some fragments excepted, has its present direction through Detroit and Michilimackinac, and is included in many calculations, heretofore stated, of the proportion which the Indian trade within our limits, bears to that within the British limits. Its estimated amount is even understood to embrace the proceeds of a clandestine trade with the Spanish territories; so that the new scene suddenly explored by Cato, is old and trodden ground, the special reference to which cannot vary the results that have been presented. It is still unquestionably and notoriously true, that the fur trade within our limits, bears no proportion to that within the British limits. As to a contingent traffic with the territories of Spain, each party will be free to pursue it according to right and opportunity; each would have, independent of the treaty, the facility of bordering territories. The geography of the best regions of the fur trade, in the Spanish territories, is too little known, to be much reasoned upon; and if the Spaniards, according to their usual policy, incline to ex-

clude their neighbors, their precautions along the Mississippi will render the access to it circuitous; a circumstance which makes it problematical, whether the possession of the opposite bank is, as to that object, an advantage or not, and whether we may not find it convenient to be able, under the treaty, to take a circuit through the British territories.

2. It is upon the suggestion of Great Britain having no ports on the Mississippi, that the charge of want of reciprocity in the privileges granted, with regard to the use of that river, is founded. The suggestion has been shown to be more peremptory than is justified by facts. Yet it is still true that the ports on our side bear no proportion to any that can exist on the part of the British, according to the present state of territory. It will be examined, in a subsequent place, how far this disproportion is a proper rule in the estimate of reciprocity. But let it be observed, in the mean time, that in judging of the reciprocity of an article, it is to be taken collectively. If, upon the whole, the privileges obtained are as valuable as those granted, there is a substantial reciprocity; and to this test, upon full and fair examination of the article, I freely refer the decision. Besides, if the situation of Great Britain did not permit, in this particular, a precise equivalent, it will not follow that the grant on our part was improper, unless it can be shown that it was attended with some inconvenience, injury, or loss to us; a thing which has not been, and I believe cannot be shown. Perhaps there is a very importantly beneficial side to this question. The treaty of peace established between us and Great Britain, a common interest in the Mississippi; the present treaty strengthens that common interest. Every body knows that the use of the river is denied so by Spain, and that it is an indispensable outlet to our western country. Is it an inconvenient thing to us that the interest of Great Britain has, in this particular, been more completely separated from that of Spain and more closely connected with ours?

3. The agreement to forbear to lay duties of entry on peltries, is completely defensible on the following grounds, viz.: It is the general policy of commercial nations to exempt raw materials from duty. This has likewise been the uniform policy of the

United States; and it has particularly embraced the article of *peltries*, which, by our existing laws, may be imported into any part of the United States *free from duty*. The object of this regulation is the encouragement of manufactures, by facilitating a cheap supply of raw materials. A duty of entry, therefore, as to such part of the article as might be worked up at home, would be prejudicial to our manufacturing interest; as to such part as might be exported, if the duty was not drawn back, would injure our commercial interest. But it is the general policy of our laws, in conformity with the practice of other commercial countries, to draw back and return the duties which are charged upon the importation of foreign commodities. This has reference to the advancement of the export trade of the country; so that, with regard to such peltries as should be re-exported, there would be no advantage to our revenue from having laid a duty of entry. Such a duty, then, being contrary to our established system and to true principles, there can be no objection to a stipulation against it. As to its having the effect of making our country the channel of the British trade in peltries, this, if true, and it is indeed probable, could not but promote our interest. A large proportion of the profits would then necessarily remain with us, to compensate for transportation and agencies. It is likely, too, that to secure the fidelity of agents, as is usual, copartnerships would be formed, of which British capital would be the principal instrument, and which would throw a still greater proportion of the profits into our hands. The more we can make our country the entrepot, the emporium of the trade of foreigners, the more we shall profit. There is no commercial principle more obvious than this, more universally agreed, or more generally practised upon, in countries where commerce is well understood.

4. The fourth of the above enumerated suggestions is answered, in its principal point, by the practice just stated, of drawing back the duties on importation, when articles are re-exported. This would place the articles, which we should send into the British territories, exactly upon the same footing, as to duties, with the same articles imported there from Europe. With regard to the additional expense of transportation, this is another instance

of the contradiction of an argument, which has been relied upon by both sides, which is, that taking the voyage from Europe in conjunction with the interior transportation, the advantage, upon the whole, is likely to be in our favor. And it is upon this aggregate transportation that the calculation ought to be made. With respect to India or Asiatic articles, there is the circumstance of a double voyage.

5. As to the small population of Canada, which is urged to depreciate the advantages of the trade with the white inhabitants of those countries, it is to be observed that this population is not stationary. If the date of the census be rightly quoted, it was taken eleven years ago, when there were already 123,082 souls. It is presumable that this number will soon be doubled; for it is notorious that settlement has proceeded for some years with considerable rapidity in Upper Canada; and there is no reason to believe that the future progress will be slow. In time to come, the trade may grow into real magnitude; but be it more or less beneficial, it is so much gained by the article; and so much clear gain, since it has been shown not to be true that it is counterbalanced by a sacrifice in the fur trade.

6. With regard to the supposed danger of smuggling, in the intercourse permitted by this article, it is very probable it will be found less than if it were prohibited. Entirely to prevent trade between bordering territories is a very arduous, perhaps an impracticable task. If not authorized, so much as is carried on must be illicit; and it may be reasonably presumed that the extent of illicit trade will be much greater in that case, than where an intercourse is permitted, under the usual regulations and guards. In the last case, the inducement to it is less, and such as will only influence persons of little character or principle, while every fair trader is, from private interest, a sentinel to the laws; in the other case, all are interested to break through the barriers of a rigorous and apparently unkind prohibition. This consideration has probably had its weight with our government in opening a communication through Lake Champlain with Canada; of the principle of which regulation, the treaty is only an extension.

7. The pretended inequality of the article, as arising from the greater extent of the United States than of the British territories, is one of those fanciful positions which are so apt to haunt the brains of visionary politicians. Traced through all its consequences, it would terminate in this, that a great empire could never form a treaty of commerce with a small one; for, to equalize advantages according to the scale of territory, the small state must compensate for its deficiency in extent, by a greater *quantum* of positive privilege, in proportion to the difference of extent, which would give the larger state the monopoly of its trade. According to this principle, what wretched treaties have we made with France, Sweden, Prussia, and Holland! For our territories exceed in extent those of either of these powers. How immense the sacrifice in the case of Holland! for the United States are one hundred times larger than the United Provinces.

But how are we sure that the extent of the United States is greater than the territories of Great Britain on our continent? We know that she has pretensions to extend to the Pacific Ocean, and to embrace a vast wilderness, incomparably larger than the United States, and we are told, as already mentioned, that her trading establishments now actually extend beyond the 56th degree of north latitude, and 117th degree of west longitude.

Shall we be told (shifting the original ground) that not extent of territory, but extent of population is the measure? Then how great is the advantage which we gain in this particular, by the treaty at large? The population of Great Britain is to that of the United States, about two and a half to one: and the comparative concession by her in the trade between her European dominions and the United States, must be in the same ratio. When we add to this the great population of her East India possessions, in which privileges are granted to us, without any return, how prodigiously will the value of the treaty be enhanced, according to this new and extraordinary rule?

But the rule is, in fact, an absurd one, and only merits the notice which has been taken of it, to exhibit the weak grounds of the opposition to the treaty. The great standard of reciprocity is equal privilege. The adventitious circumstances, which may

render it more beneficial to one party than the other, can seldom be taken into the account, because they can seldom be estimated with certainty; the relative extent of country or population, is, of all others, a most fallacious guide.

The comparative resources and facilities for mutual supply, regulate the relative utility of a commercial privilege; and as far as population is concerned, it may be laid down, as a general rule, that the smallest population graduates the scale of the trade on both sides, since it is at once the principal measure of what the smaller state can furnish to the greater, and of what it can take from the greater; or, in other words, of what the greater state can find a demand for in the smaller state. But this rule, too, like most general ones, admits of numerous exceptions.

In case of a trade by land and inland navigation, the sphere of the operation of any privilege can only extend a certain distance. When the distance to a given point, through a particular channel, is such that the expense of transportation would render an article dearer than it could be brought through another chan nel to the same point, the privilege to carry the article through that particular channel to such point, becomes of no avail. Thus the privilege of trading by land or inland navigation from the British territories on this continent, can procure to that country no advantage of trade with Princeton in New Jersey, because supplies can come to it on better terms from other quarters. Whence we perceive, that the absolute extent of territory or population of the United States, is no measure of the relative value of the privileges reciprocally granted by the article under consideration, and, consequently, no criterion of the real reciprocity of the article.

The objectors to the treaty have marshalled against this article a quaint figure, of which from the use of it in different quarters, it is presumable they are not a little enamoured; it is this, that the article enables Great Britain to draw *a line of circumvallation* round the United States. They hope to excite prejudice, by presenting to the mind the image of a siege, or investment of the country. If trade be war, they have chosen a most apt figure; and we cannot but wonder, how the unfortunate island

of Great Britain has been able so long to maintain her independence amidst the beleaguering efforts of the number of nations with whom she has been imprudent enough to form treaties of commerce; and who, from her insular situation, have it in their power to beset and hem her in on all sides. How lucky it is for the United States, that at least one side is covered by Spain, and that this formidable line of circumvallation cannot be completely perfected! or rather how hard driven must those be, who are obliged to call to their aid auxiliaries so preposterous!

Can any good reason be given, why one side of a country should not be accessible to foreigners, for purposes of trade, equally with another? Might not the cultivators on the side from which they were excluded, have cause to complain, that the carriage of their productions was subject to an increased charge, by a monopoly of the national navigation; while the cultivators in other quarters enjoyed the benefit of a competition between that and foreign navigation? and might not all the inhabitants have a right to demand a reason, why their commerce should be less open and free, than that of other parts of the country? Will privileges of trade extend the line of territorial circumvallation? Will not the extent of contiguous British territory remain the same, whether the communications of trade are open or shut? By opening them, may we not rather be said to make so many breaches in the wall, or intrenchment of this newly-invented circumvallation? if indeed it be not enchanted!

The argument upon this article has hitherto turned, as to the trade with the white inhabitants of the British territories, on European and East India goods. But there can be no doubt that a mutually-beneficial commerce in native commodities ought to be included in the catalogue of advantages. Already there is a useful interchange of certain commodities, which time and the progress of settlement and resources cannot fail to extend. It is most probable, too, that a considerable part of the productions of the British territories will find the most convenient channel to foreign markets through us; which, as far as it regards the interest of external commerce, will yield little less advantage, than if they proceeded from our own soil or industry. It is evident, in

particular, that as far as this shall be the case, it will prevent a great part of the competition with our commodities which would exist, if those productions took other routes to foreign markets.

In considering the subject, on the side of a trade in home commodities, it is an important reflection, that the United States are much more advanced in industrious improvement, than the British territories. This will give us a material and growing advantage. While their articles of exchange with us will essentially consist in the products of agriculture and of mines, we shall add to these manufactures of various and multiplying kinds, serving to increase the balance in our favor.

In proportion as the article is viewed on an enlarged plan and permanent scale, its importance to us magnifies. Who can say how far British colonization may spread southward and down the west side of the Mississippi, northward and westward into the vast interior regions towards the Pacific Ocean? Can we view it as a matter of indifference, that this new world is eventually laid open to our enterprise, to an enterprise seconded by the immense advantage already mentioned, of a more improved state of industry? Can we be insensible, that the precedent furnishes us with a cogent and persuasive argument to bring Spain to a similar arrangement? And can we be blind to the great interest we have, in obtaining a free communication with all the territories that environ our country, from the St. Mary's to the St. Croix?

In this large view of the subject, the fur trade which has made a very prominent figure in the discussion, becomes a point scarcely visible. Objects of great variety and magnitude, start up in perspective, eclipsing the little atoms of the day, and promising to grow and mature with time.

The result of the whole is, that the United States make, by the third article of the treaty, a good bargain—that with regard to the fur trade, with equality of privileges and superior advantages of situation, we stake one against seven, or at most one against six—that as to the trade in European and East Indian goods and in home productions, we make an equal stake with some advantages of situation—that we open an immense field of future enterprise, —that we avoid embarrassments and dangers ever attendant on

an artificial and prohibitory policy, which, in reference to the Indian nations, was particularly difficult and hazardous—and that we secure those of a natural and liberal policy, and give the fairest chances for good neighborhood between the United States and the bordering British territories, and consequently of good understanding with Great Britain, conducing to the security of our peace. Experience, no doubt, will demonstrate that the horrid spectres which have been conjured up, are fictions; and if it should even be slow to realize the predicted benefits (for time will be requisite to give permanent causes their due effect in controlling temporary circumstances), it will at last prove that the predicted evils are chimeras and cheats.

CAMILLUS.

NO. XIII.

1795.

The fourth and fifth articles of the treaty, from similarity of object, will naturally be considered together. The fourth, reciting a doubt, "whether the river Mississippi extends so far northwestward, as to be intersected by a line drawn due west from the Lake of the Woods, in the manner mentioned by the treaty of peace," agrees, that measures shall be taken in concert between the two governments, to make a joint survey of that river, from a degree of latitude below the falls of St. Anthony, to the principal source or sources thereof, and of the parts adjacent thereto; and that if in the result it should appear that the said river would not be intersected by such a line as above mentioned, the two parties will proceed by amicable negotiation, to regulate the boundary line in that quarter, as well as all other points to be adjusted between them, according to justice and mutual convenience, and the intent of the treaty of peace. The fifth, reciting that doubts have arisen, what river was truly intended under the name of the river St. Croix, mentioned in the treaty of peace, and forming a part of the boundary therein described, provides that the ascertainment of the point shall be referred to three

commissioners, to be appointed thus: one to be named by his Britannic majesty, another by the President of the United States, with the advice and consent of the Senate, the third by these two, if they can agree in the choice; but if they cannot agree, then each of them to name a person, and out of the persons named, one drawn by lot in their presence to be the third commissioner. These commissioners are to meet at Halifax, with power to adjourn to any place or places they may think proper —are to be sworn to examine and decide the question according to the evidence which shall be laid before them by both parties— and are to pronounce their decision, which is to be conclusive, by a written declaration under their hands and seals, containing a description of the river, and particularly the latitude and longitude of its mouth and of its source.

These articles, though they have been adjusted with critical propriety, have not escaped censure. They have even in one instance been severely reprobated, as bringing into question, things about which there was no room for any—and which a bare inspection of the map was sufficient to settle.

With regard to the Mississippi, there is no satisfactory evidence that it has ever been explored to its source. It is even asserted, that it has never been ascended beyond the 45th degree of north latitude, about a degree above the falls of St. Anthony. Fadeus's map in 1793, will serve as a specimen of the great uncertainty which attends this matter. It notes that the river had not been ascended beyond the degree of latitude just mentioned, and exhibits three streams, one connected with the *Marshy Lake* in that latitude, another with the *White Bear Lake* near the 46th degree, and the third with the *Red Lake* in the 47th degree; denominating each of the two first, "the Mississippi by conjecture," and the last, "Red Lake River, or Laboutan's Mississippi,"—all of them falling considerably short in their northern extent, of the Lake of the Woods, which is placed as high as the fiftieth degree of north latitude. Thus stands this very clear and certain point, which, we are told, it was disgraceful on the part of our envoy to have suffered to be brought into question.

There is, however, a specific topic of blame of the article

which has greater plausibility. It is this, that it does not finally settle the question, but refers the adjustment of the closing line to future negotiation, in case it should turn out that the river does not stretch far enough north to be intersected by an east and west line from the Lake of the Woods. I answer, that the arrangement is precisely such as it ought to have been. It would have been premature to provide a substitute till it was ascertained that it was necessary. This could only be done by an actual survey. A survey is therefore provided for and will be made at the joint expense of the two countries.

That survey will not only determine whether a substitute be requisite or not; but it will furnish data for judging what substitute is proper, and most conformable to the true intent of the treaty. Without the data which it will afford, any thing that could have been done, would have been too much a leap in the dark. National acts, especially on the important subject of boundary, ought to be bottomed on a competent knowledge of circumstances. It ought to be clearly understood how much is retained, how much is relinquished. Had our envoy proceeded on a different principle, if what he had agreed to had turned out well, it would have been regarded as the lucky result of an act of supererogation. If it had proved disadvantageous, it would have been stigmatized as an act of improvidence and imprudence.

The strong argument for having settled an alternative is the avoiding of future dispute. But what alternative could have been agreed upon, which might not have bred controversy? The closing line must go directly or indirectly to the Mississippi—which of the streams reputed or conjectured to be such, above the falls of St. Anthony, is best entitled to be so considered? To what known point was the line to be directed? How was that point to be identified with adequate certainty? The difficulty of answering these questions, will evince that the danger of controversy might have been increased by an impatience to avoid it, and by anticipating, without the necessary lights, an adjustment which they ought to direct.

The facts with regard to the river St. Croix, are these: the

question is, which of two rivers is the true St. Croix? The dispute concerning it is as old as the French possession of Nova Scotia. France set up one river; Great Britain another. The point was undecided when the surrender of Nova Scotia by the former to the latter, put an end to the question as between those parties. It was afterwards renewed between the colonies of Nova Scotia and Massachusetts Bay, which last, in the year 1762, appointed commissioners to ascertain, in conjunction with commissioners which might be appointed by the province of Nova Scotia, the true river, but no final settlement of the matter ensued.

The treaty of peace gives us for one boundary, the river St. Croix, but without designating it. Hence it has happened, that not long after the peace was concluded, the question, which had been before agitated between France and Great Britain, and between the provinces of Massachusetts and Nova Scotia, was revived between the State of Massachusetts and that province, and it has ever since continued a subject of debate.

A mode of settling the dispute was under the consideration of Congress in the year 1785; and powers were given to our then minister at the court of London, to adjust the affair, but nothing was concluded. And we learn from a letter of Mr. Jefferson to Mr. Hammond, dated the 15th December, 1791, that it then also engaged the attention of our government; that the ascertaining of the point in dispute was deemed a matter of "present urgency," and that it had before been the subject of application from the United States to the government of Great Britain.

It is natural to suppose, that a dispute of such antiquity between such different parties, is not without colorable foundation on either side: at any rate, it was essential to the preservation of peace that it should be adjusted.

If one party could not convince the other by argument, of the superior solidity of its pretensions, I know of no alternative but arbitration or war. Will any one pretend that honor required us in such a case to go to war, or that the object was of a nature to make it our interest to refer it to that solemn, calamitous, and precarious issue? No rational man will answer this question in

the affirmative. It follows, that an arbitration was the proper course, and that our envoy acted rightly in acceding to this expedient. It is one, too, not without precedents among nations, though it were to be wished, for the credit of human moderation, that they were more frequent.

Is there any good objection to the mode of the arbitration? It seems impossible that any one more fair or convenient could have been devised, and it is recommended by its analogy to what is common among individuals.

What the mode is, has been already detailed, and need not be repeated here. It is objected, that too much has been left to chance; but no substitute has been offered which would have been attended with less casualty. The fact is, that none such can be offered. Conscious of this, those who make the objection have not thought fit to give an opportunity of comparison by proposing a substitute. What is left to chance? Not that there shall be a final decision; for this is most effectually provided for. It is not only positively stipulated that commissioners, with full and definitive power, shall be appointed, but an ultimate choice is secured, by referring, in the last resort, to a decision *by lot*, what it might not be practicable to decide by agreement. This is the *ne plus ultra* of precaution. Is it that this reference to lot leaves it too uncertain of what character or disposition the third commissioner may be? If this be not rather a recommendation of the fairness of the plan, how was it to be remedied? Could it have been expected of either of the parties, to leave the nomination to the other? Certainly not. Would it have been advisable to have referred the ultimate choice to some other state or government? Where would one have been found, in the opinion of both parties, sufficiently impartial? On which side would there have been the greatest danger of a successful employment of undue influence? Is it not evident that this expedient would have added to equal uncertainty, as to character and disposition, other casualties and more delay? Should it have been left to the two commissioners, appointed by the parties to agree at all events? It might have been impossible for them to come to an agreement, and then the whole plan of set-

tlement would have been frustrated. Would the sword have been a more certain arbiter? Of all uncertain things, the issues of war are the most uncertain. What do objections of this kind prove, but that there are persons resolved to object at all events?

The submission of this question to arbitration has been represented as an eventual dismemberment of empire, which, it has been said, cannot rightly be agreed to, but in a case of extreme necessity. This rule of extreme necessity is manifestly only applicable to a cession or relinquishment of a part of a country, held by a clear and acknowledged title; not to a case of disputed boundary.

It would be a horrid and destructive principle, that nations could not terminate a dispute about the title to a particular parcel of territory, by amicable agreement, or by submission to arbitration as its substitute; but would be under an indispensable obligation to prosecute the dispute by arms, till real danger to the existence of one of the parties should justify, by the plea of extreme necessity, a surrender of its pretensions.

Besides, the terms in which writers lay down the rule, and the reason of it, will instruct us that where it does apply, it relates not to territory as such, but to those who inhabit it, on the principle that the social compact entitles all the members of the society to be protected and maintained by the common strength in their rights and relations as members. It is understood, that the territory between the two rivers in dispute, is either uninhabited, or inhabited only by settlers under the British. If this be so, it obviates all shadow of difficulty on our side. But be it as it may, it would be an abuse of the rule, to oppose it to the amicable adjustment of an ancient controversy, about the title to a particular tract of country, depending on a question of fact, whether this or that river be the one truly intended by former treaties between the parties. The question is not, in this case, Shall we cede a part of our country to another power? It is this—To whom does this tract of country truly belong? Should the weight of evidence be on the British side, our faith, pledged by the treaty, would demand from us an acquiescence in their

claim. Not being able to agree in opinion on this point, it was most equitable and most agreeable to good faith to submit it to an impartial arbitration.

It has been asked, among other things, whether the United States were competent to the adjustment of the matters without the special consent of the State of Massachusetts. Reserving a more particular solution of this question to a separate discussion of the constitutionality of the treaty, I shall content myself with remarking here, that our treaty of peace with Great Britain, by settling the boundaries of the United States without the specific consent or authority of any State, assumes the principle, that the government of the United States was of itself competent to the regulation of boundary with foreign powers—that the actual government of the Union has even more plenary authority with regard to treaties, than was possessed under the confederation, and that acts, both of the former and of the present government, presuppose the competency of the national authority to decide the question in the very instance under consideration. I am informed, also, that the State of Massachusetts has, by repeated acts, manifested a corresponding sense on the subject.

A reflection not unimportant occurs here. It was, perhaps, in another sense than has been hitherto noticed, a point of prudence in both governments to refer the matter in dispute to arbitration. If one had yielded to the pretensions of the other, it could hardly have failed to draw upon itself complaints, and censures, more or less extensive, from quarters immediately interested or affected.

CAMILLUS.

NO. XIV.

1795.

The sixth article stipulates compensation to British creditors for losses and damages which may have been sustained by them, in consequence of certain legal impediments, which, since the

treaty of peace with Great Britain, are alleged to have obstructed the recovery of debts *bona fide* contracted with them before the peace.

To a man who has a due sense of the sacred obligation of a just debt, a proper conception of the pernicious influence of laws which infringe the rights of creditors, upon morals, upon the general security of property, upon public as well as private credit, upon the spirit and principles of good government; who has an adequate idea of the sanctity of the national faith, explicitly pledged—of the ignominy attendant upon a violation of it in so delicate a particular as that of private pecuniary contracts—of the evil tendency of a precedent of this kind to the political and commercial interests of the nation generally—every law which has existed in this country, interfering with the recovery of the debts in question, must have afforded matter of serious regret and real affliction. To such a man, it must be among the most welcome features of the present treaty, that it stipulates reparation for the injuries which laws of that description may have occasioned to individuals, and that, as far as is now practicable, it wipes away from the national reputation the stain which they have cast upon it. He will regard it as a precious tribute to justice, and as a valuable pledge for the more strict future observance of our public engagements; and he would deplore as an ill-omened symptom of the depravation of public opinion, the success of the attempts which are making to render the article unacceptable to the people of the United States. But of this there can be no danger. The spontaneous sentiments of equity, of a moral and intelligent people, will not fail to sanction, with their approbation, a measure which could not have been resisted without inflicting a new wound upon the honor and character of the country.

Let those men who have manifested by their actions, a willing disregard of their own obligations as debtors—those who secretly hoard, or openly and unblushingly riot on the spoils of plundered creditors, let such men enjoy the exclusive and undivided satisfaction of arraigning and condemning an act of national justice, in which they may read the severest reproach of their ini-

quitous principles and guilty acquisitions. But let not the people of America tarnish their honor by participating in that condemnation, or by shielding with their favorable opinion, the meretricious apologies which are offered for the measures that produced the necessity of reparation.

The recapitulation of some facts will contribute to a right judgment of this part of the treaty.

It is an established principle of the laws of nations, that, on the return of peace between nations which have been at war, a free and undisturbed course shall be given to the recovery of private debts on both sides.* In conformity to this principle, the 4th article of the treaty of peace between the United States and Great Britain, expressly stipulates, "that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all bona fide debts theretofore contracted."

Two instances of the violation of this article have been already noticed, with a view to another point; one relating to certain laws of the State of Virginia, passed prior to the peace, which, for several years after it, appears to have operated to prevent the legal pursuit of their claims by British creditors. Another, relating to a law of the State of South Carolina, which suspended the recovery of the debts for nine months, and after that period permitted the recovery only in four years' instalments.

But these were not all the instances; there were other laws of South Carolina prolonging the instalments, and obliging the creditors to receive in payment the property of debtors at appraised values; and there were laws of Rhode Island, New Jersey, North Carolina, and Georgia, making paper money a legal tender for the debts of those creditors; which, it is known, sustained a very great depreciation in every one of those States. These very serious and compulsory interferences with the rights of the creditors, have received from Decius, the soft appellation of a modification of the recovery of British debts. Does he

* Grotius, b. iii. c. xx. s. xvi.

expect to make us believe, by this smooth phrase, that the right to recover the full value of a debt in sterling money, is satisfied by the obligation to take as a substitute, one half, one third, or one fourth of the real value in paper?

It must necessarily have happened, that British creditors have sustained, from the operation of the different acts alluded to, losses more or less extensive, which the mere removal of the legal impediments which occasioned them could not repair. In many instances, the losses must have actually accrued and taken their full effect: in others, where no proceedings may have been had, the lapse of so many years must have created inabilities to pay, in debtors who were originally competent, who might have been made to pay, had there been a free course of justice.

The removal of the impediments, therefore, by opening of the courts of justice, was not an adequate satisfaction. It could not supersede the obligation of compensation for losses which had irretrievably accrued by the operation of the legal impediments, while they continued in force. The claim for this was still open on the part of Great Britain, and still to be adjusted between the two nations.

The excuse, that these laws were retaliations for prior infractions of treaty by Great Britain, was in no view an answer to the claim.*

In the first place, as has already been proved, the fact of such prior infractions was too doubtful to be finally insisted upon, and was, after a fruitless effort to obtain the acquiescence of the other party, properly and necessarily waved; so that it could not serve as a plea against reparation.

* It may not be improper to observe, that this excuse implies a palpable violation of the then Constitution of the United States. The confederation vested the powers of war and of treaty in the Union. It therefore lay exclusively with Congress to pronounce, whether the treaty was or was not violated by Great Britain, and what should be the satisfaction. No State, individually, had the least right to meddle with the question, and the having done it was an usurpation on the constitutional authority of the United States.

It might be shown, on a similar principle, that all confiscations or sequestrations of *British debts*, by particular States, during the war, were also unconstitutional.

In the second place, if that fact had been indubitable, the species of retaliation was unwarrantable. It will be shown, when we come to discuss the 10th article, that the debts of private individuals are in no case a proper object of reprisals; that independent of the treaty, the meddling with them was a violation of the public faith and integrity; and that, consequently, it was due as much to our own public faith and integrity, as to the individual who had suffered, to make reparation. It was an act demanded by the justice, probity, and magnanimity of the nation.

In the third place, it was essential to reciprocity in the adjustment of the disputes which had existed concerning the treaty of peace. When we claimed the reinstatement and execution of the article with regard to the posts, it was just that we should consent to the reinstatement and execution of the article with regard to debts. If the obstruction of the recovery of debts was the equivalent by way of retaliation for the detention of the posts, we could not expect to have restitution of the thing withheld, and to retain the equivalent for it likewise. The dilemma was, to be content with the equivalent, and abandon the thing; or to recover the thing, and abandon the equivalent: to have both was more than we could rightly pretend. The reinstatement of the article, with regard to the debts, necessarily included two things, the removal of legal impediments as to the future recovery; compensation for past losses by reason of those impediments. The first had been effected by the new Constitution of the United States; the last is promised by the treaty.

Did our envoy reply, that the reinstatement of the article with regard to the posts included likewise compensation for their detention? Was it an answer to this, destitute of reason, that our loss, by the detention of the posts, which resolved itself essentially into the uncertain profits of a trade that might have been carried on, admitted of no satisfactory rule of computation; while the principal and interest of private debts afforded a familiar standard for the computation of losses upon them: that, nevertheless, while this was the usual, and must be the admitted standard, it is an adequate one in cases where payment is pro-

tracted beyond the allowed term of credit; since the mere interest of money does not countervail among merchants, the profits of its employment in trade, and still less the derangements of credit and fortune, which frequently result to creditors, from procrastinations of payment; and that the final damage to Great Britain, in these two particulars, for which no provision could be made, might well exceed any losses to us by the detention of the posts?

In the last place, the compensation stipulated was a *sine qua non* with Great Britain, of the surrender of the posts, and the adjustment of the controversy which had subsisted between the two countries. The making it such may be conceived to have been dictated more by the importance of the precedent, than by the quantum of the sum in question. We shall easily understand this, if we consider how much the commercial capital of Great Britain is spread over the world. The vast credits she is in the habit of extending to foreign countries, renders it to her an essential point to protect those credits by all the sanctions in her power. She cannot forbear to contend at every hazard against precedents of the invasion of the rights of her merchants, and for retribution where any happen. Hence, it is always to be expected, that she will be peculiarly inflexible on this point: and that nothing short of extreme necessity can bring her to relax in an article of policy, which perhaps not less than any other, is a necessary prop of the whole system of her political economy.

It was, therefore, to have been foreseen that whenever our controversy with Great Britain was adjusted, compensation for obstructions to the recovery of debts would make a part of the adjustment. The option lay between compensation, relinquishment of the posts, or war. Our envoy is entitled to the applause of all good men, for preferring the first. The extent of the compensation can, on no possible scale, compare with the immense permanent value of the posts, or with the expenses of war. The sphere of the interferences has been too partial to make the sum of the compensation, in any event, a very serious object; and as to a war, a conscientious or virtuous mind could never endure the

thoughts of seeing the country involved in its calamities, to get rid of an act of justice to individuals, whose rights, in contempt of public faith, had been violated.

Having reviewed the general considerations which justify the stipulation of compensation, it will be proper to examine if the plan upon which it is to be made, is unexceptionable.

This plan contains the following features: 1. The cases provided for are those "where losses and damages occasioned by the operation of lawful impediments (which since the peace have delayed the full recovery of British debts, *bona fide contracted before the peace, and still owing to the creditors*, and have impaired and lessened the value and security thereof) *cannot now, for whatever reason, be actually obtained in the ordinary course of justice.* 2. There is an express exception out of this provision, *of all the cases* in which losses and damages have been occasioned *by such insolvency of the debtors, or other causes, as would equally have operated to produce them, if no legal impediment had existed, or by the manifest delay, or negligence, or wilful omission, of the claimants.* 3. The amount of the losses and damages, for which compensation is to be made, is to be ascertained by five commissioners to be appointed as follows: two by his Britannic majesty, two by the President with the advice and consent of the Senate, the fifth by the unanimous voice of these four, if they can agree; if they cannot agree, then to be taken by lot out of two persons, one of whom to be named by the two British commissioners, the other by the two American commissioners. 4. These five commissioners, thus appointed, are, before they proceed to the execution of their trust, to take an oath for its faithful discharge. Three of them to constitute a board; but there must be present one of the two commissioners named on each side, and the fifth commissioner. Decisions to be made by majority of voices of those present. They are first to meet at Philadelphia, but may adjourn from place to place as they see cause. 5. Eighteen months after the commissioners make a board, are assigned for receiving applications; but the commissioners, in particular cases, may extend the term for any further term, not exceeding six months. 6. The commissioners are empowered to take into consideration all claims, whether

of principal or interest, or balances of principal or interest, and to determine them according to the merits and circumstances thereof, and as justice and equity shall appear to them to require—to examine persons on oath or affirmation, and to receive in evidence, depositions, books, papers, or copies, or extracts thereof, either according to the legal forms existing in the two countries, or according to a mode to be devised by them. 7. Their award is to be conclusive; and the United States are to cause the sum awarded in each case to be paid in specie to the creditor without deduction, and at such time and place as shall have been awarded; but no payment to be required sooner than twelve months from the day of the exchange of the ratifications of the treaty.

This provision for ascertaining the compensation to be made, while it is ample, is also well guarded.

It is confined to debts contracted before the peace, and still owing to the creditors. It embraces only the cases of loss or damage in consequence of legal impediments to the recovery of those debts which will exclude all cases of voluntary compromise, and can include none, where the laws have allotted a free course to justice. It can operate in no instance where, at present, *the ordinary course of justice* is competent to full relief, and the debtor is solvent; nor in any, where insolvency or other cause would have operated to produce the loss or damage, if no legal impediment had existed, or where it had been occasioned by the wilful delay, negligence, or omission of the creditor.

If it be said that the commissioners have nevertheless much latitude of discretion, and that in the exercise of it they may transgress the limits intended, the answer is, that the United States, though bound to perform what they have stipulated with good faith, would not be bound to submit to a manifest abuse of authority by the commissioners. Should they palpably exceed their commission, or abuse their trust, the United States may justifiably, though at their peril, refuse compliance. For example, if they should undertake to award upon a debt contracted since the peace, there could be no doubt that their award would be a nullity. So likewise there may be other plain cases of misconduct, which, in honor and conscience, would exonerate the United

States from performance. It is only incumbent upon them to act, *bona fide*, and as they act at their peril, to examine well the soundness of the ground on which they proceed.

With regard to the reference to commissioners to settle the quantum of the compensation to be made, this course was dictated by the nature of the case. The tribunals of neither country were competent to retrospective adjustment of losses and damages, in many cases which might require it. It is for this very reason of the incompetency of the ordinary tribunals to do complete justice, that a special stipulation of compensation, and a special mode of obtaining it, became necessary. In constituting a tribunal to liquidate the quantum of reparation, in the case of a breach of treaty, it was natural and just to devise one likely to be more certainly impartial than the established courts of either party. Without impeaching the integrity of those courts, it was morally impossible that they should not feel a bias towards the nation to which they belonged, and for that very reason they were unfit arbitrators. In the case of the spoliations of our property, we should undoubtedly have been unwilling to leave the adjustment in the last resort to the British courts; and by parity of reason, they could not be expected to refer the liquidation of compensation in the case of the debts to our courts. To have pressed this would have been to weaken our argument for a different course in regard to the spoliations. We should have been puzzled to find a substantial principle of discrimination.

If a special and extraordinary tribunal was to be constituted, it was impracticable to contrive a more fair and equitable plan for it than that which has been adopted. The remarks on the mode of determining the question respecting the river St. Croix, apply in full force here, and would render a particular comment superfluous.

To the objection of the Charleston committee, that the article erects a tribunal unknown to our constitution, and transfers to commissioners the cognizance of matters appertaining to American courts and juries, the answer is simple and conclusive. The tribunals established by the Constitution do not contemplate a case between nation and nation arising upon a breach of treaty,

and are inadequate to the cognizance of it. Could either of them hold plea of a suit of Great Britain plaintiff, against the United States, defendant? The case, therefore, required the erection or constitution of a new tribunal; and it was most likely to promote equity to pass by the courts of both the parties.

The same principle contradicts the position that there has been any transfer of jurisdiction from American courts and juries to commissioners. It is a question not between individual and individual, or between our government and individuals, but between our government and the British government; of course, one in which our courts and juries have no jurisdiction. There was a necessity for an extraordinary tribunal to supply the defect of ordinary jurisdiction; and so far is the article from making the transfer imputed to it, that it expressly excepts the cases in which effectual relief can be obtained in the ordinary course of justice.

Nations acknowledging no common judge on earth, when they are willing to submit the question between them to a judicial decision, must of necessity constitute a special tribunal for the purpose. The mode by commissioners, as being the most unexceptionable, has been repeatedly adopted.

I proceed to reply to some other objections which have been made against the provision contained in this article.

It is charged with affixing a stigma on the national character, by providing reparation for an infraction, which, if it ever did exist, has been done away, there being now a free course to the recovery of British debts in the courts of the United States.

An answer to this objection has been anticipated by some observations heretofore made. The giving a free course to justice in favor of British creditors, which has been effected by the new Constitution of the United States, though it obviates the future operation of legal impediment, does not retrospectively repair the losses and damages which may have resulted from their past operation. In this respect, the effects continued, and reparation was due. To promise it, could fix no stigma on our national character. That was done by the acts which created the cause for reparation. To make it, was as far as possible to remove the stigma.

It has been said that the promise of compensation produces

injustice to those states which interposed no legal impediments to the recovery of debts, by saddling them with a part of the burden arising from the delinquencies of the transgressing states. But the burden was before assumed by the treaty of peace. The article of that treaty, which engaged that there should be no lawful impediments to the recovery of debts, was a guarantee by the United States of justice to the British creditors. It charged them with the duty of taking care that there was no legal obstacle to the recovery of the debts of those creditors, and consequently with a responsibility for any such obstacle which should happen, and with the obligation of making reparation for it. We must, therefore, refer to the treaty of peace, not to the last treaty, the common charge which has been incurred by interference in the recovery of British debts. The latter only carries into execution the promise made by the former. It may be added that it is a condition of the social compact that the nation at large shall make retribution to foreign nations for injuries done to them by its members.

It has been observed, that Mr. Jefferson has clearly shown, that interest in cases like that of British debts, is liable, during the period of the war, to equitable abatements and deductions; and that, therefore, the discretion given to the commissioners on this head ought not to have been as large as it appears in the article.

Mr. Jefferson has, no doubt, offered arguments of real weight to establish the position that judges and juries have, and exercise, a degree of discretion in any article of interest; and that the circumstances of our war with Great Britain, afford strong reasons for abatements of interest. But it was foreign to his purpose, and accordingly he has not attempted, to particularize the rules which ought to govern in the application of this principle to the variety of cases in which the question may arise: and he has himself noted that the practice in different states and in different courts, has been attended with great diversity. Indeed, admitting the right to abate interest under special circumstances, in cases in which it is the general rule to allow it, the circumstances of each case, are, perhaps, the only true criterion of the

propriety of an exception. The particular nature of the contract, the circumstances under which it was entered into, the relative situation of parties, the possibility or not of mutual access; these and other things would guide and vary the exercise of the discretion to abate. It was, therefore right to leave the commissioners, as they are left, in the same situation with judges and juries:— to act according to the true equity of the several cases or of the several classes of cases.

Let it be remembered, that the government of Great Britain has to consult the interests and opinions of its citizens, as well as the government of the United States those of their citizens. The only satisfactory course which the former could pursue, in reference to its merchants, was to turn over the whole question of interest as well as principal to the commissioners. And as this was truly equitable, the government of the United States could make no well-founded opposition to it.

CAMILLUS.

NO. XV.

1795.

It is the business of the seventh article of the treaty, to provide for two objects: one, compensation to our citizens for injuries to their property, by irregular, or illegal captures, or condemnations; the other, compensation to British citizens for captures of their property within the limits and jurisdiction of the United States, or elsewhere, by vessels originally armed in our ports, *in the cases in which the captured property having come within our posts and power, there was a neglect to make restitution.*

The first object is thus provided for; 1. It is agreed, that in all cases of irregular and illegal captures or condemnations of the vessels and other property of citizens of the United States, under color of authority or commissions from his Britannic majesty, in which adequate compensation for the losses and damages sustained, cannot, for whatever reason, be actually obtained in the

ordinary course of justice, full and complete compensation for the same will be made by the British government to the claimants; except where the loss or damage may have been occasioned by the manifest delay or negligence, or wilful omission of those claimants. 2. The amount of the losses and damages to be compensated, is to be ascertained by five commissioners, who are to be appointed in exactly the same manner as those for liquidating the compensation to British creditors. 3. These commissioners are to take a similar oath, and to exercise similar powers for the investigation of claims with those other commissioners: and they are to decide according to the merits of the several cases, and to justice, equity, and the laws of nations. 4. The same term of eighteen months is allowed for the reception of claims, with a like discretion to extend the term, as in the case of British debts. 5. The award of these commissioners, or of three of them, under the like guards as in that case, is to be final and conclusive, both as to the justice of the claims, and to the amount of the compensation. And, lastly, his Britannic majesty is to cause the compensation awarded, to be paid to the claimants in specie, without deduction, at such times and places, and upon the condition of such releases or assignments, as the commissioners shall prescribe.

Mutually and dispassionately examined, it is impossible not to be convinced, that this provision is ample, and ought to be satisfactory. The course of the discussion will exhibit various proofs of the disingenousness of the clamors against it; but it will be pertinent to introduce here one or two samples of it.

It has been alleged, that while the article preceding, and this article, provide effectually for every demand of Great Britain against the United States, the provision for this important and urgent claim of ours is neither explicit nor efficient, nor co-extensive with the object, nor bears any proportion to the *summary method*, adopted for the satisfying of British claims.

This suggestion is every way unfortunate. The plan for satisfying our claim, except as to the description of the subject which varies with it, is an exact copy of that for making compensation to British creditors. Whoever will take the pains to compare, will find, that in the leading points, literal conformity is studied;

and that in others, the provisions are assimilated by direct references; and will discover also this important distinction in favor of the efficiency and summariness of the provision for our claim —that while the commissioners are expressly restricted from awarding payment to British creditors, to be made sooner than one year after the exchange of ratifications of the treaty, they are free to award it to be made the very day of their decision, for the spoliations of our property. As to compensation for British property, captured within our limits, or by vessels originally armed within our ports and not restored, which is the only other British claim that has been provided for, it happens that this, forming a part of the very article we are considering, is submitted to the identical mode of relief which is instituted for making satisfaction to us.

So far, then, is it from being true, that a comparison of the modes of redress provided by the treaty, for the complaints of the respective parties, turns to our disadvantage, that the real state of the case exhibits a substantial similitude, with only one material difference, and that in our favor; and, that a strong argument for the equity of the provisions on each side, is to be drawn from their close resemblance of each other.

The other suggestion alluded to, and which has been shamelessly reiterated, is, that Denmark and Sweden, by pursuing a more spirited conduct had obtained better terms than the United States. It is even pretended, that one or both of them had actually received from Great Britain a gross sum on account—in anticipation of an ultimate liquidation. In my second number, the erroneousness of the supposition, that those powers had obtained more than the United States, was intimated; but the subsequent repetition of the idea, more covertly in print, and very openly and confidently in conversation, renders expedient an explicit and peremptory denial of the fact. There never has appeared a particle of evidence to support it; and after challenging the asserters of it to produce their proof, I aver, that careful inquiry, at sources of information, at least as direct and authentic as theirs, has satisfied me, that the suggestion is wholly unfounded, and that at the time of the conclusion of our treaty with

Great Britain, both Denmark and Sweden were behind us in the effect of their measures for obtaining reparation.

What are we to think of attempts like these, to dupe and irritate the public mind? Will any prudent citizen still consent to follow such blind or such treacherous guides?

Let us now, under the influence of a calm and candid temper, without which truth eludes our researches, by a close scrutiny of the provision, satisfy ourselves, whether it be not really a reasonable and proper one. But previous to this it is requisite to advert to a collateral measure, which was also a fruit of the mission to Great Britain, and which ought to be taken in conjunction with the stipulations of this article. I refer to the order of the British king in council, of the 6th of August, 1794, by which order the door, before shut by lapse of time, is opened to appeals from the British West India courts of admiralty, to be brought at any time which shall be judged reasonable by the lords commissioners of appeals in prize causes. This, of itself, was no inconsiderable step towards the redress of our grievances; and it may be hoped, that with the aid which the government of the United States has given to facilitate appeals, much relief may ensue from this measure. It will not be wonderful, if it should comport with the pride and policy of the British government, by promoting justice in their courts, to leave as little as possible to be done by the commissioners.

I proceed now to examine the characteristics of the supplementary provision made by the article, in connection with the objections to it.

It admits fully and explicitly the principle, that compensation is to be made for the losses and damages sustained by our citizens, by irregular or illegal captures, or condemnations of their vessels and other property, under color of authority (which includes governmental orders and instructions) or of commissions of his Britannic majesty. It is to be observed, that the causes of the losses and damages are mentioned in the disjunctive, "captors or condemnations;" so that damages by captures, which were not followed by condemnations, are provided for as well as those where condemnations did follow.

A cavil has been raised on the meaning of the word color, which, it is pretended, would not reach the cases designed to be embraced; because the spoliations complained of, were made, not merely by *color*, but actually by *virtue* of instructions from the British government.

For the very reason that this subtil and artificial meaning ascribed to the term, would tend to defeat the manifest general intent of the main provision of the article, which is plainly to give reparation for irregular or illegal captures or condemnations of American property, contrary to the laws of nations—that meaning must be deemed inadmissible.

But in fact, the expression is the most accurate that could have been used, to signify the real intent of the article. When we say, a thing was done by color of an authority or commission, we mean one of three things; that it was done on the pretence of a *sufficient* authority or commission *not validly* imparted, or on the pretence of *such* an authority or commission *validly* imparted but *abused* or *misapplied*, or on the pretence of an *insufficient* authority or commission, regularly, as to form, imparted and exercised. It denotes a defect of rightful and just authority, whether emanating from a wrong source, or improperly from a right source; whereas the phrase "by virtue of," is most properly applicable to the valid exercise of a valid authority. But the two phrases are not unfrequently used as synonymous. Thus, in a proclamation of the British king, of the 25th of May, 1792, he, among other things, forbids all his subjects, by *virtue* or under *color* of any foreign commission or letters of reprisals, to disturb, infest, or damage, the subjects of France.

In whose mouths does the article put the expression? In those of citizens of the United States? What must they be presumed to have meant? Clearly this; that by color of instructions or commissions of his Britannic majesty, either exercised erroneously, or issued erroneously, as being contrary to the laws of nations; the citizens of the United States had suffered loss and damage by irregular or illegal captures or condemnations of their property. What is the standard appealed to, to decide the irregularity or illegality to be redressed? Expressly the laws of na-

tions. The commissioners are to decide "according to the merits of the several cases, to justice, equity, and the *laws of nations.*" Wherever these laws, as received and practised among nations, pronounce a capture or condemnation of neutral property to have been irregular or illegal, though by color of an authority or commission of his Britannic majesty, it would be the duty of the commissioners to award compensation.

The criticism, however, fails on its own principle, when tested by the fact. The great source of grievance, intended to be redressed by the article, proceeded from the instruction of the 6th of November, 1793. That instruction directs the commanders of ships of war and privateers, to stop and detain all ships laden with goods, the produce of any colony belonging to France, or carrying provisions and other supplies for the use of such colony, and to bring the same, with their cargoes, to *legal adjudication* in the British courts of admiralty. These terms, "*legal adjudication,*" were certainly not equivalent, upon any rational construction, to *condemnation.* Adjudication means simply, a judical decision, which might be either to acquit or condemn. Yet the British West India courts of admiralty appear to have generally acted upon the term as synonymous with condemnation. In doing this, they may be truly said, even in the sense of the objection, to have acted by color, only, of the instruction.

The British cabinet have disavowed this construction of the West India courts; and have, as we have seen, by a special act of interference, opened a door which was before shut to a reversal of their sentences, by appeal to the courts in England. We find, also, that the term adjudication is used in the XVIIth article of our late treaty as synonymous only with judicial decision, according to its true import. This, if any thing were wanting, would render it impossible for the commissioners to refuse redress on the ground of the condemnations, if otherwise illegal, being warranted by the pretended sense of the words legal adjudication. But in reality, as before observed, their commission will be to award compensation in all cases, in which they are of opinion, that, according to the established laws of nations, captures or condemnations were irregular or illegal, however otherwise author-

ized; and this in contempt of the quibbling criticism which has been so cunningly devised.

2d. The provision under consideration, obliges the British government, in all cases of illegal captures or condemnations in which adequate compensation cannot, for whatever reason, be actually had in the ordinary course of justice, to make full and complete compensation to the claimants, which is to be paid in specie to themselves, without deduction, at such times and places as shall be awarded.

They are not sent for redress to the captors, or obliged to take any circuitous course for their payment, but are to receive it immediately from the treasury of Great Britain.

3d. The amount of the compensation in each case is to be fixed by five commissioners, two appointed by the United States, two by Great Britain: the fifth by these four, or in case of disagreement, by lot. These commissioners to meet and act in London.

It seems impossible, as has been observed and shown in the analogous cases, to imagine a plan for organizing a tribunal more completely equitable and impartial than this; while it is the exact counterpart of the one which is to decide on the claims of British creditors. Could it have been believed, that so palpable an error could have been imposed on a town meeting, in the face of so plain a provision, as to induce it to charge against this article, that, in a national concern of the United States, redress was left to British courts of admiralty? Yet, strange as it may appear, this did happen even in the truly enlightened town of Boston. The just pride of that town will not quickly forget, that it has been so compromitted.

The truth is, that, according to the common usage of nations, the courts of admiralty of the belligerent parties are the channels through which the redress of injuries to neutrals is sought. But Great Britain has been brought to agree to refer all the cases, in which justice cannot be obtained through those channels, to an extraordinary tribunal; in other words, to arbitrators mutually appointed.

It is here that we find the reparation of the national wrong

which we had suffered. In admitting the principle of compensation by the government itself, in agreeing to an extraordinary tribunal, in the constitution of which the parties have an equal voice, to liquidate that compensation, Great Britain has virtually and effectually acknowledged the injury which had been done to our neutral rights, and has consented to make satisfaction for it. This was an apology in fact, however it may be in form.

As it regards our honor, this is an adequate, and the only species usual in similar cases between nations; pecuniary compensation is the true reparation in such cases—governments are not apt to go upon their knees to ask pardon of other governments—Great Britain, in the recent instance of the dispute with Spain about Nootka Sound, was glad to accept of a like reparation. It merits remark, incidentally, that the instrument, which settles this dispute, expressly waves, like our treaty, reference to the merits of the complaints and pretensions of the respective parties. Is our situation such as to authorize us to pretend to impose humiliating conditions on other nations!

It is necessary to distinguish between injuries and insults, which we are too apt to confound. The seizures and spoliations of our property fall most truly under the former head. The acts which produced them, embraced all the neutral powers, were not particularly levelled at us, bore no mark of an intention to humble us by any peculiar indignity or outrage.

These acts were of June 8th, and of November 6th, 1793. The seizure of our vessels going with provisions to the dominions of France, under the first, was put on the double ground of a war extraordinary in its principle,* and of a construction of the laws of nations, which, it was said, permitted that seizure; a construction not destitute of color, and apparently supported by the authority of Vatel, though, in my opinion, ill founded. It was accompanied also by compensation for what was taken, and other circumstances, that evinced a desire to smooth the act. The indiscriminate confiscation of our property, upon the order

* Though this country has viewed the principle of the war favorably, it is certain that Europe generally, the neutral powers n ot wholly excepted, has viewed it in a different light, so that this was not a mere pretence.

of the 6th of November, which was the truly flagrant injury, was certainly unwarranted by that order (and no secret one has appeared)—and the matter has been so explained by the British government. It is clear that evils suffered under acts so circumstanced, are injuries rather than insults—and are so much the more manageable as to the species and measure of redress. It would be Quixotism to assert that we might not honorably accept in such a case, the pecuniary reparation which has been stipulated.

But it is alleged, in point of interest, it is unsatisfactory—tedious in the process—uncertain in the event; that there ought to have been actual and immediate indemnifications, or at least, a payment upon account.

A little calm reflection will convince us, that neither of the two last things was to be expected. There was absolutely no criterion, either for a full indemnification, or for an advance upon account. The value of the property seized and condemned (lay out of the case damages upon captures where condemnation had not ensued) was not ascertained, even to our own government, with any tolerable accuracy. Every well-informed man will think it probable, that of this, a proportion was covered French property. There were, therefore, no adequate data, upon which our government could demand, or the British government pay, a determined sum. Both governments must have acted essentially by guess. Ours could not in honor or conscience have made even an estimate but upon evidence. It might have happened, that a sum which appeared upon the evidence that had been collected, sufficient, might have proved on further evidence insufficient. Too little, as well as too much, might have been demanded and paid. But it will perhaps be said, that some gross estimate might have been formed; and that of this, such a part might have been advanced upon account, as was within the narrowest probable limit, liable to eventual adjustment. Let us for a moment suppose this done—what good end would it have answered? How could the United States have distributed this money among the sufferers, till it was ascertained which of them was truly entitled, and to how much? Is it not evident, that if they had

made any distribution, before the final and perfect investigation of the right of each claimant, it would be at the risk of making mispayments, and of being obliged to replace the sums mispaid, perhaps at a loss to the United States, for the benefit of those who should be found to be better entitled? Would it have been expedient for our government to have incurred this risk to its constituents? And if the money was to be held undistributed till an investigation of claims was completed, to what purpose the haste about an advance?

On the other hand—Is it in this loose, gross way, that nations transact affairs with each other? Do even individuals make indemnifications to one another, in so lumping a manner? Could it be expected of Great Britain, that she would pay, till it was fairly ascertained what was to be paid; especially when she had too much cause to suspect, that a material proportion of the property claimed, might turn out to be French? Would it have been justifiable on our part, to make her compliance with such a demand, the *sine qua non* of accommodation and peace? Whoever will believe that she would have complied with so humiliating a requisition, must be persuaded that we were in a condition to dictate, and she in a condition to be obliged to receive any terms that we might think fit to prescribe! The person who can believe this, must be, in my opinion, under the influence of a delirium, for which there is no cure in the resources of reason and argument.

It must be admitted, that it was matter of necessity, that investigation should precede payment; then I see not what more summary mode could have been devised. Who more capable of proceeding with dispatch, than arbitrators untrammelled with legal forms; vested with powers to examine parties and others, on oath, and to command and receive all evidence in their own way? Here are all the means of expedition divested of every clog.

Eighteen months are allowed for preferring claims, but the commissioners are at liberty to adjust them as fast as they are preferred. In every case in which it appears to them *bona fide*, that the ordinary course of justice is inadequate to relief, they

may forthwith proceed to examine and decide. There is no impediment, no cause of delay whatever, more than the nature of a due investigation always requires.

The meeting of the commissioners at London, was recommended by the circumstance that the admiralty courts were likely to concentre there a considerable part of the evidence, on which they were to proceed; which, upon the whole, might favor dispatch, as well as more complete justice. In many cases, the decisions of those courts may come under their review.

As to the uncertainty of the event, this, as far as it may be true, was inseparable from any plan, bottomed on the idea of a previous investigation of claims: and it has been shown, that some such plan was reasonable and inevitable.

It may also be added, that the plan affords a moral certainty of substantial justice, which is all that can rationally be expected in similar affairs; compensation, where due, is explicitly stipulated. A fair and adequate mode of deciding and liquidating it has been settled. All the arguments which were adduced to prove the probability of good faith, in regard to the posts, apply equally to this subject. The interest which every nation has in the preservation of character, and which the most profligate dare not entirely disregard—the consideration of defeating the fulfilment of the stipulations on our part—the size of the object, certainly not of great magnitude—the very discouraging situation for replunging suddenly into a new war, in which the present war will in every event leave Great Britain. These are reasons which afford solid ground of assurances that there will be no evasion of performance.

As to the commissioners, two of the five will be of our choice, a third may be so likewise; but should it prove otherwise, it will be surprising if one of the other three, all acting under oath, and having character at stake, shall not be disposed to do us reasonable justice.

3d. While their power is coextensive with *all* losses and damages from irregular *or* illegal captures *or* condemnations, their sentence in each case is to be conclusive, and the rules which are to govern it, as prescribed by the article, are the merits

of each case, justice, equity, and the law of nations. What greater latitude could have been desired to be given? What greater latitude could have been given? What else in the case was there to have been provided for? What is meant by the assertion, that the provision is not commensurate with the object?

The general and unqualified reference to the laws of nations, dismisses all pretence to substitute the arbitrary regulations of Great Britain as rules of decision. Her instructions or orders, if incompatible with those laws, are nullities.

Thus the treaty unfetters the question between us and her, from the commencement of the war, and with her own consent, commits them at large to a tribunal to be constituted by mutual choice.

Will any man of candor and equity say, that a better provision ought to have been expected than has been accomplished?

The alternative was immediate indemnification, by actual payment in whole or in part, without examination of the extent or justice of claims; or future indemnification, after a due investigation of both in some equitable and effectual mode. The first was attended with difficulties on our side, and with solid objections on the other side. The last was therefore the truly reasonable course, and it has been pursued on a very proper plan. The causes of loss and damage are fully embraced. They are referred to the decision of an unexceptionable tribunal, to be guided by unexceptionable rules, and the indemnification which may be awarded, is to be paid fully, immediately, and without *detour* by the British government itself. Say, ye impartial and enlightened, if all this be not as it ought to have been!

CAMILLUS.

NO. XVI.

1795.

The second object of the seventh article, as stated in my last number, is "compensation to British citizens, for captures of

their property within the limits and jurisdiction of the United States, or elsewhere, by vessels originally armed in our ports, *in the cases in which the captured property having come within our power, there was a neglect to make restitution.*"

This precise view of the thing stipulated, is calculated to place the whole subject at once before the mind, in its true shape; to evince the reasonableness of it, and to dismiss the objections which have been made, as being foreign to the real state of the case. These objections are, in substance, that the compensation promised is of great extent and amount; that an enormous expense is likely to be incurred; and that it is difficult to prove, that a neutral nation is under an obligation to go the lengths of the stipulation.

These remarks obviously turn upon the supposition, erroneously entertained or disingenuously affected,—that compensation is to be made for *all captures* within our limits or jurisdiction, or elsewhere, by vessels originally armed in our ports, where restitution has not, in fact, been made. Did the stipulation stand on this broad basis, it would be justly liable to the criticism which has been applied to it. But the truth is, that its basis is far more narrow—that instead of extending to all those captures, it is confined to the *particular cases* of them only, in which the captured property came, or was, after the capture, within our power, so as to have admitted of restitution by us, but restitution was not made, through the *omission* or *neglect* of our government. It does not extend to a single case, where the property, if taken within our jurisdiction, was immediately carried out of our reach—or where, if taken within our jurisdiction, it was never brought within our reach, or where, if at any time within our reach, due means were employed without success to effect restitution.

It will follow from this, that the cases within the purview of the article, must be very few—for, except with regard to three prizes, made in the first instance, where special considerations restrained the government from interposing, there has been a regular and constant effort of the executive, in which our courts have efficaciously co-operated, to restore prizes made within our

jurisdiction, or by vessels armed in our ports. The extent or amount, therefore, of the compensation to be made, can by no possible means be considerable.

Let us, however, examine if the construction I give to the clause be the true one.

It is in these words:—"It is agreed that in all such cases where *restitution* shall not have been made *agreeably* to the tenor of the letter from Mr. Jefferson to Mr. Hammond, dated September 5th, 1793, a copy of which is annexed to this treaty, the complaints of the parties shall be and hereby are referred to the commissioners to be appointed by virtue of this article, who are hereby authorized and required to proceed in the like manner relative to these as to the other cases committed to them; and the United States undertake to pay to the complainants in specie, without deduction, the amount of such sums as shall be awarded to them respectively," &c.

The letter of Mr. Jefferson, by this reference to it, and its annexation to the treaty, is made virtually a part of the treaty. The cases in which compensation is promised, are expressly those in which *restitution* has not been made, *agreeably to the tenor of that letter.*

An analysis of the letter will of course unfold the cases intended.

1. It recapitulates an assurance before given by a letter of the 7th August, to the British minister, that measures were taken for excluding from further asylum in our ports, vessels armed in them to cruise on nations with which we were at peace, and for the restoration of the prizes the Lovely Lass, Prince William Henry, and the Jane of Dublin; *and that, should the measures of restitution fail in their effect, the President considered it as incumbent on the United States, to make compensation for the vessels.* These vessels had been captured by French privateers, originally armed in our ports, and had been afterwards *brought within our ports.*

2. It states that we are bound by our treaties with three of the belligerent nations,* by all the means in our power, to pro-

* France, Holland, and Prussia, and our treaty with Sweden includes a like proviso.

tect and defend their vessels and effects in our ports or waters, or on the seas near our shore, and to recover and restore the same to the right owners, when taken from them; adding, that *if all the means in our power are used*, and fail in their effect, we are *not bound* by our treaties to make compensation. It further states, that though we have no similar treaty with Great Britain, it was the opinion of the President, that we should use towards that nation the same rule which was to govern us with those other nations, and even to extend it to captures made on the high seas and *brought into our ports*, if done by vessels which had been armed within them.

3. It then draws this conclusion, that having, for particular reasons, *forbore to use all means in our power* for the restitution of the three vessels mentioned in the letter of the 7th of August, the President thought it incumbent upon the United States to make compensation for them: and though nothing was said in that letter, of other vessels, taken *under like circumstances* and *brought in* after the 5th of June, and before the date of that letter, yet when the *same forbearance* had taken place, it was his opinion that *compensation* would be *equally due*. The cases, then, here described, are those in which illegal prizes are made, and *brought into our ports*, prior to the 7th of August, 1793, and in which we had *forborne to use all the means in our power* for restitution. Two characters are made essential to the cases in which the compensation is to be made; one, that the prizes *were brought within our ports*—the other, that we *forbore to use all the means in our power* to restore them.

4. The letter proceeds to observe, that, as to prizes made under the *same circumstances, and brought in* after the date of that letter, the President had determined, *that all means in our power should be used* for their restitution; that if *these failed*, as we should not be bound to make compensation to the other powers, in the analogous case, he did *not mean to give an opinion, that it ought to be done to Great Britain*. But still, if any case shall arise, subsequent to that date, *the circumstances of which shall place them on a similar ground with those before it*, the President would think compensation incumbent on the United States. The additional

cases of which an expectation of compensation is given in this part of the letter, must stand on *similar ground with those before described*—that is, they must be characterized by the two circumstances of a *bringing within our ports*, and a *neglect to use all the means in our power* for their restitution. Every where the idea of compensation is negatived, where the prizes have not come within our power, or where we have not forborne to use the proper means to restore them.

The residue of the letter merely contains suggestions for giving effect to the foregoing assurances.

This analysis leaves no doubt that the true construction is such as I have stated. Can there be any greater doubt that the expectations given by the President, in the first instance, and which have been only ratified by the treaty, were in themselves proper, and have been properly ratified?

The laws of nations, as dictated by reason, as received and practised upon among nations, as recognized by writers, establish these principles for regulating the conduct of neutral powers.

A neutral nation (except as to points to which it is clearly obliged by antecedent treaties) whatever may be its opinion of the justice or injustice of the war on either side, cannot, without departing from its neutrality, *favor* one of two belligerent parties more than the other—*benefit* one, to the *prejudice* of the other—furnish or permit the furnishing to either, the instruments of acts of hostility, or any warlike succor or aid whatever, especially without extending the same advantage to the other—cannot suffer any force to be exerted, or warlike enterprise to be carried on from its territory, by one party against the other, or the preparation or organization there, of the means of annoyance; has a right and is bound to prevent acts of hostility within its jurisdiction; and, if they happen against its will, to restore any property which may have been taken in exercising them. These positions will all be found supported in the letter or spirit of the following authorities; Barbeyrac's note on Puffendorff, b. viii. c. vi. f. 7. Grotius, b. iii. c. xvii. f. 3. Bynkershoeck, b. i. c. viii. p. 61—65. c. xi. p. 69, 70. Vattel, b. iii. c. vii. Bynkershoeck cites examples of restitution in the case mentioned.

Every treaty we have made with foreign powers, promises protection within our jurisdiction, and the restoration of property taken there. A similar stipulation is, indeed, a general formula in treaties, giving an express sanction to the rule of the laws of nations in this particular.

An act of Congress, of the 5th June, 1794, which is expressly a declaratory act, recognizes at large the foregoing principles of the laws of nations, providing, among other things, for the punishment of any person, who, within the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or is knowingly concerned in furnishing, fitting out, or arming, of any ship or vessel, with intent to be employed in the service of a foreign state, to cruise or commit hostilities upon the subjects or citizens of another foreign state, with which the United States are at peace; or issues or delivers a commission for any such ship or vessel, or increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting the force of any ship of war, cruiser, or other armed vessel, in the service of a foreign state at war with another foreign state, with which the United States are at peace; or within the territory of the United States, begins or sets on foot, or provides or prepares the means of any military expedition or enterprise, to be carried on from thence against the dominions of any foreign state, with which the United States are at peace.

And our courts have adopted, in its fullest latitude, as conformable, in their opinion, with those laws, the principle of restitution of property, when either captured within our jurisdiction, or elsewhere, by vessels armed in our ports. The Supreme Court of the United States has given to this doctrine, by solemn decisions, the most complete and comprehensive sanction.

It is therefore, undoubtedly, the law of the land, determined by the proper constitutional tribunal, in the last resort, that *restitution is due* in the above-mentioned cases.

And it is a direct and necessary consequence from this, that where it is not made by reason of the neglect of the government, to use the means in its power for the purpose, there results an obligation to make reparation. For, between nations, as between

individuals, wherever there exists a perfect obligation to do a thing, there is a concomitant obligation to make reparation for omissions and neglects,

The President was therefore most strictly justifiable, upon principle, in the opinion which he communicated, that, in the cases of such omissions or neglects, compensation ought to be made. And in point of policy, nothing could be wiser: for had he not done it, there is the highest probability, that war would have ensued.

Our treaty with France forbids us expressly to permit the privateers of the enemy to arm in our ports, or to bring or sell there the prizes which they have made upon her. We could not, for that reason, have made the privilege of arming in our ports, if it had been allowed to France, reciprocal. The allowance of it to her would, consequently, have been a clear violation of neutrality, in the double sense of permitting a military aid, and of permitting it to the one, and refusing it to the other. Had we suffered France to equip privateers in our ports, to cruise thence upon her enemies, and to bring back and vend there the spoils or prizes taken, we should have become by this the most mischievous foe they could have. For, while all our naval resources might have augmented the force of France, our neutrality, if tolerated, would, in a great degree, have sheltered and protected her cruisers. Such a state of things no nation at war could have acquiesced in. And as well to the efficacy of our endeavors to prevent equipments in our ports, as to the proof of the sincerity of those endeavors, it was essential that we should restore the prizes which came within our reach, made by vessels armed in our ports. It is known, that notwithstanding the utmost efforts of the government to prevent it, French privateers have been clandestinely equipped in some of our ports, subsequent to the assurances which were given, that the practice would be discountenanced. If prizes made by such vessels were suffered to be brought into our ports, and sold there, this would be not only a very great encouragement to the practice, but it would be impossible that it should be regarded in any other light than as a connivance.

In such circumstances, can we blame our chief magistrate? Can we even deny him praise, for having diverted an imminent danger to our peace, by incurring the responsibility of giving an expectation of compensation? The conjuncture we may remember was critical and urgent. Congress were at the time in recess. A due notice to convene them in so extensive a country, can hardly be rated at less than three months.

In this situation our envoy found the business. It is not true, in the sense in which it has been advanced, that he was to be governed by the fitness of the thing, unmindful of the opinion of the President. An opinion of the chief magistrate of the Union, was to a diplomatic agent an authority and a guide, which he could not justifiably have disregarded. The claim of compensation, on the other side, was greatly *fortified* by this opinion. Nor was it a matter of indifference to our national delicacy and dignity, that the expectation given by it should be fulfilled. It would have been indecent in our envoy to have resisted it. It was proper in him, by acceding to it, to refer the matter to the ultimate decision of that authority, which, by our Constitution, is charged with the power of making treaties. It was the more proper, because the thing was intrinsically right. Every candid man, every good citizen, will rejoice that the President acted as he did in the first instance—that our envoy acted as he did in the second—and that the conduct of both has received the final constitutional sanction.

The opinions of Mr. Jefferson, when they can be turned to the discredit of the treaty, are with its adversaries oracular truths. When they are to support it, they lose all their weight. The presumption, that the letter referred to had the concurrence of the judgment of that officer, results from a fact, generally understood and believed, namely, that the proceedings of the President, at the period when it was written, in relation to the war, were conformable with the unanimous advice of the heads of the executive departments.

This case of British property captured by privateers originally armed in our ports, falsifies the assertion of the adversaries of the treaty, that the pretensions of Great Britain have

been fully provided for. She had a colorable ground to claim compensation for *all captures* made by vessels armed in our ports, whithersoever carried in, or howsoever disposed of, especially where their equipment had been tolerated by our government. This toleration was to be referred, as well from a forbearance to suppress those vessels when they came within power, as from an original permission. Had compensation been stipulated on this scale, it is not certain that it would not have amounted to as much more than that which has been promised, as would counterbalance our claims, for negroes carried away, and for the detention of the posts. But instead of this, it is narrowed down by the treaty to such prizes of those vessels as were brought within our ports, and in respect to which we forbore to use all the means in our power for restitution. Here, then, is a set-off against doubtful and questionable claims relinquished on our side. Here, also, is another proof how much the antagonists of the treaty are in the habit of making random assertions. But can we wonder at it, when we reflect that they have undertaken to become the instructors of their fellow-citizens on a subject, in the examination of which they unite a very superficial knowledge with the most perverse dispositions?

CAMILLUS.

NO. XVII.

1795.

The eighth article provides merely, that the commissioners to be appointed in the three preceding articles, shall be paid in such manner as shall be agreed between the parties, at the time of the exchange of the ratification of the treaty; and that all other expenses attending the commissions, shall be defrayed jointly by the two parties, the same being previously ascertained and allowed by a majority of the commissioners; and that in case of death, sickness, or necessary absence of a commissioner, his place shall be supplied in the same manner as he was first appointed

—the new commissioner to take the same oath or affirmation, and to perform the same duties as his predecessor.

Could it have been imagined, that even this simple and equitable provision was destined not to escape uncensured? As if it was predetermined, that not a single line of the treaty should pass without the imputation of guilt; nothing less than an infraction of the Constitution of the United States has been charged upon this article. It attempts, we are told, a disposition of the public money, unwarranted by and contrary to the Constitution. The examination of this wonderful, sagacious objection, with others of a similar complexion, must be reserved for the separate discussion which has been promised of the constitutionality of the treaty.

Let us proceed, for the present, to the ninth article.

This article agrees, that British subjects, who *now hold* lands in the territories of the United States, and American citizens who *now hold* lands in the dominions of his Britannic majesty, shall continue to hold them, *according to the nature and tenure of their respective estates and titles therein;* and may grant, sell, or devise the same to whom they please, in like manner as if they were natives; and that neither they, nor their heirs or assigns, *so far as may respect the said lands*, and the legal remedies incidental thereto, shall be *regarded as aliens.*

The misapprehension of this article, which was first ushered into public view, in a very incorrect and insidious shape, and was conceived to amount in the grant of an indefinite and permanent right to British subjects to hold lands in the United States, did more, it is believed, to excite prejudices against the treaty, than any thing that is really contained in it. And yet when truly understood, it is found to be nothing more than a confirmation of those rights to lands, which, prior to the treaty, the laws of the several States allowed British subjects to hold; with this inconsiderable addition, perhaps, that the heirs and assigns of those persons, *though aliens*, may hold the same lands: but no right whatever is given to lands of which our laws did not permit and legalize the acquisition.

These propositions will now be elucidated.

The term, hold, in the legal code of Great Britain and of these States, has the same and that a precise technical sense. It imports a *capacity legally* and *rightfully* to *have* and *enjoy* real estate, and is contradistinguished from the mere capacity of *taking* or *purchasing*, which is sometimes applicable to the acquisition of a thing, that is forfeited by the very act of acquisition. Thus an alien may *take* real estate by *purchase*, but he cannot hold it. Holding is synonymous with tenure, which, in the feudal system, implies *fealty*, of which an alien is incapable. Land, therefore, is forfeited to the government, the instant it passes to an alien. The Roman law nullifies the contract entirely; so that nothing passes by the grant of land to an alien: but our law, derived from that of England, permits the land to pass for the purpose of forfeiture to the State. This is not the case with regard to *descent*, because the succession or transmission there, being an act of law, and the alien being disqualified to hold, the law, consistent with itself, casts no estate upon him.

The following legal authorities, selected from an infinite number of similar ones, establish the above positions, viz., COKE on LITTLETON, pages 2, 3. "Some men have *capacity* to *purchase*, but not *ability* to *hold*. Some, *capacity* to *purchase* and *ability* to *hold* or *not to hold*, at the election of themselves and others. Some, capacity to *take* and to *hold*. Some, neither capacity to *take* nor to *hold*. And, some are specially disabled to *take* some *particular thing*. If an alien, Christian or Infidel, *purchase* houses, lands, tenements, or hereditaments to him or his heirs, albeit he can have no heirs, yet he is of capacity to *take* a fee simple, but *not to hold*." The same, page 8. "If a man seized of land in fee, hath issue an alien, he cannot be heir, *propter defectum subjectionis*." Blackstone's Commentaries, book ii., chap. xviii., § 2. "Alienation to an alien is a cause of forfeiture to the crown of the lands so alienated, not only on account of his *incapacity to hold* them, but likewise on account of his presumption in attempting, by an act of his own, to acquire real property." Idem, chap. xix., § i., "the case of an alien born, is also peculiar; for he may *purchase* a thing; but, after purchase, he can hold nothing, except a lease for years of a house, for the convenience of merchandise."

Thus it is evident, that by the laws of England, which it will not be denied, agree in principle with ours, an ALIEN may *take* but cannot *hold* lands.

It is equally clear, the laws of both countries agreeing in this particular, that the word *hold*, used in the article under consideration, must be understood according to those laws, and therefore can only apply to those cases in which there was a *legal capacity to hold*—in other words, those in which our laws permitted the subjects and citizens of the two parties to *hold* lands in the territories of each other. Some of these cases existed prior to the treaty of peace; and where confiscations had not taken place, there has never been a doubt, that the property was effectually protected by that treaty. Others have arisen since that treaty, under special statutes of particular States. Whether there are any others depending on the principles of the common law, need not be inquired into here, since the late treaty will neither strengthen nor impair the operation of those principles.

Whatever lands, therefore, may have been purchased by any British subject, since the treaty of peace, which the laws of the State wherein they were purchased did not permit him to acquire and hold, are entirely out of the protection of the article under consideration; the purchase will not avail him; the forfeiture, which was incurred by it, is still in full force. As to those lands which the laws of a State allowed him to purchase and hold, he ows his title to them, not to the treaty.

Let us recur to the words of the article: "British subjects, who *now hold* lands, shall *continue* to *hold* them *according to the nature and tenure of their respective estates and titles therein.*" But it has been seen, that to *hold* lands is to own them in a legal and competent capacity, and that an alien has no such capacity. The lands, therefore, which, by reason of the alienage of a British subject, he could not, prior to the treaty, legally purchase and hold—he cannot, under the treaty, continue to hold. As if it was designed to render this conclusion palpable, the provision goes on to say, "According to the nature and tenure of their respective estates and titles therein." This is equivalent to saying, they shall continue to hold as they before held. If

they had no valid estate or title before, they will of course continue to have none—the expressions neither give any new, nor enlarge any old estate.

The succeeding clauses relate only to descents or alienations of the land originally legally holden. Here the disability of alienage is taken away from the heirs and assigns of the primitive proprietors. While this will conduce to private justice, by enabling the families and friends of the individuals to enjoy their property by descent or devise, which it is presumable was the main object of the provision, there is no consideration of national policy that weighs against it. If we admit the whole force of the argument, which opposes the expediency of permitting aliens to hold lands (and concerning which I shall barely remark here, that it is contrary to the practice of several of the States, and to a practice from which some of them have hitherto derived material advantages) the extent to which the principle is affected by the present treaty is too limited to be felt, and in the rapid mutations of property, it will every day diminish. Every alienation of a parcel of the privileged land to a citizen of the United States, will, as to that land, by interrupting the chain, put an end to the future operations of the privilege; and the lapse of no great number of years may be expected to make an entire revolution in the property, so as to divest the whole of the privilege.

To manifest the unreasonableness of the loud and virulent clamor, which was excited against this article, it has been observed by the friends of the instrument, that our treaty with France not only grants a much larger privilege to the citizens of France, but goes the full length of removing universally and perpetually from them the disability of alienism, as to the ownership of lands. This position has been flatly denied by some of the writers on the other side. Decius in particular, after taking pains to show that it is erroneous—that the terms "goods movable and immovable," in the article of our treaty with France, mean only *chattels* real and personal in the sense of our law, and exclude a right to the freehold and inheritance of lands, triumphantly plumes himself on the detection of a fal-

lacy of the writer of certain "candid remarks on the treaty," who gives the interpretation above stated to that article.

The error of Decius's interpretation, proceeds from a misunderstanding of the term goods, in the English translation of the article, to which he annexes the meaning assigned to that term in our law, instead of resorting, as he ought to have done, to the French laws for the true meaning of the correspondent term *biens*, which is that used in the French original. Goods, in our law, no doubt, mean chattel interests: but goods or "biens" in the French law, mean all kinds of property, *real* as well as personal. It is equivalent to, and derived from, the term *bona*, in the Roman law, answering most nearly to "*estates*" in our law, and embracing inheritances in land, corporeal and incorporeal hereditaments, as well as property in movable things.

When it is necessary to distinguish one species from another, it is done by an adjective—"*biens meublés et immeublés*," answering to *bona* or *res mobilia*, or *immobilia*, things movable and immovable, *estates* real and personal.—the authorities at foot* will show the analogy of these different terms in the three different languages; but for fixing the precise sense of those used in the treaty, I have selected and shall quote two authorities from French books, which are clear and conclusive on the point.—One will be found in the work of a French lawyer, entitled, *Collection* DE DECISIONS NOUVELLES, ET DE NOTIONS RELATIVES A LA JURISPRUDENCE ACTUELLE, under the article BIENS†, and is in these words, viz.: "The word *bien* has a general signification, and comprehends *all sorts of possessions* as *movables*, *im-*

* Justinian's Institutes, Lib. iii. Tit. 10, 11, 12, 13. Lib. iv. Tit. 2. Domat's Civil and Public Law. Prel. Book, Tit. 3, Sect. 1, 2. Book iv. Sect. 1.

† Biens. Le mot, bien, a une signification generale, & comprend toutes sortes de possessions, comme meubles, immeubles, acquêts, conquêts, propres, &c.

On distingue dans les biens des particuliers, les meubles & les immeubles, les acquêts & les propres; & entre les propres, les paternels & les maternels, les anciens & les naissans. Les biens meubles sont ceux qui peuvent se mouvoir & se transporter d'un lieu en un autre, comme des denrees, des marchandises, de deniers comptans, de la vaisselle d'agent, des bestiaux, des utensiles d'hotel. Les biens immeubles sont ceux qui ne peuvent se mouvoir ou se transporter d'un lieu dans un autre, comme des heritages, des maisons, &c.

movables, *purchases*, *acquisitions* by marriage, *inheritances*, &c. It is distinguished into these particulars—movables, immovables, purchases and inheritances; subdividing inheritances into *paternal and maternal*, *old and new*. Movable *biens* are those which may be moved and transported from one place to another, as wares, merchandises, and current money, plate, beasts, household utensils, &c. Immovable *biens* are those which cannot be moved from one place to another, as inheritances, houses, &c. *Biens* are distinguished again into corporeal and incorporeal." Another* is drawn from the celebrated institutes of the French law, by Mr. Argou, and is in these words: "Biens—This is in general whatever composes our riches. There are two sorts of *biens*, movable and immovable. Movable, all that may be transported from one place to another. Immovable, lands or what is presumed to have the nature of land. They are distinguished into two kinds, real and fictitious. Real are not only the *substance of the earth*, which is called *fonds;* but all that adheres to its surface, whether from nature, as trees, or from the hand of man, as houses and other buildings. The others are called fictitious, because they are only real by fiction, as offices which are vendible, and subject to fiscal reversion, rent-charges," &c. The signification of *bona* in the Roman law, corresponds, as was observed above, with that of *biens* in the French. "Bonorum appellatio universitatem quandem, et non singulas res demonstrat," which may be rendered, "The appellation of BONA designates the totality of property or estate, and not particular things."—and hence it is, that the *cessio bonorum* of a debtor is the surrender of his whole fortune.

Both these terms, "*bona*" and "*biens*," are indiscriminately

* Biens.—C'est en generale tout ce qui compose nos richesses; il y a deux sortes de biens, les meubles & les immeubles; meubles, tout ce qui peut etre transporté d'un lieu à un autre: immeubles—biens en fonds, ou qui sont presumé avoir la nature de fonds—On distingue deux sorts d'immeubles, les réels, & les fictifs; les immeubles réels sont non seulement la substance meme de la terre qui est ce qu'on appelle le fond, mais tout ce qui est adherent à sa surface, soit par la nature, comme les arbres, soit par la main des hommes, comme les maisons & autre batiments—On a appellé l'autre espece d'immeubles, immeubles fictifs; parce qu'ils ne sont tells que par fiction; de ce nombre sont les offices venaux, casuels, & les rentes constitutués.

translated *goods*, *estates*, *effects*, *property*.*—In our treaty with France they are translated "goods;" but it is evidently a great mistake to understand the expression in the limited sense of our law. Being a mere word of translation, it must be understood according to the meaning of the French text; for it is declared in the conclusion of the treaty, that it was originally composed and concluded in the French tongue. Moreover, the term *goods*, when used in our language, as the equivalent of the term *bona*, or *biens*, is always understood in the large sense of the original term; in other words, as comprehending real and personal estate, inheritances as well as chattel interests.

Having now established the true meaning of the terms "goods movable and immovable," let us proceed with this guide to a review of the article.

Its first and principal feature is, "that the subjects and inhabitants of the United States, or any of them, shall not be reputed AUBAINS in France. This is the same as if it had been said, "they shall not be reputed ALIENS." For the definition of AUBAINS, as given in the work before first cited, is this—"AUBAINS are persons not born under the dominion of the king," the exact equivalent of the definition of ALIEN in the English law. If our citizens are not to be reputed aliens in France, it follows, that they must be exempted from alien disabilities, and must have the same rights with natives, as to acquiring, conveying, and succeeding to real and other estate. Accordingly the article, having pronounced that our citizens shall not be reputed aliens in France, proceeds to draw certain consequences. The first is, that they shall not be subject to the *droit d'aubaine*. The *droit d'aubaine* was, under the monarchy, one of the regalia; it was the right of the prince to succeed to all estates or property situate in the kingdom, belonging to foreigners, who died without legitimate children, born in the kingdom.

It is to be observed, that the laws of France permitted foreigners to acquire and hold even real estates, subject to the right of the sovereign, in case of demise without issue born under his

* See authorities before cited: See also Puffendorff, book viii. ch. 5, sect. 8. Grotius, book iii. ch. 5, sect. 11, 12. Vattel, book i. ch. 20, sect. 245, 246, 247.

allegiance. But this right of the sovereign, as to American citizens, is abrogated by the treaty; so that their legal representatives, wherever born, may succeed to all the property, real or personal, which they may have acquired in France.

And, in conformity to this, it is further declared, that they may, by testament, donation, or otherwise, dispose of their goods, movable and immovable (that is, as we have seen, their estates, real and personal) in favor of such persons as to them shall appear good; so that their heirs, subjects of the United States, whether residing in France or elsewhere, may succeed to them, *ab intestato*, without being obliged to obtain letters of naturalization.

These are the stipulations on the part of France; and they amount to a removal from the citizens of the United States, of alien disabilities in that country, as to property. I say as to property, because, as to civil and ecclesiastical employments, it seems to have been a principle of the French law, that the incapacity of foreigners could only be removed by special dispensations, directed to the particular object.

What are the correlative stipulations on the part of the United States? They are in these terms: "The subjects of the most Christian king shall enjoy, on their part, in all the dominions of the said States, an *entire* and *perfect reciprocity*, relative to the stipulations contained in this article. But it is at the same time agreed, that its contents shall not affect the laws made, or that may be made hereafter in France, against emigrations, which shall remain in all their force and vigor; and the United States on their part, or any of them, shall be at liberty to enact such laws relative to that matter, as to them shall appear proper."

Since, then, the article removes from our citizens the disabilities of aliens as to property in France, and stipulates for her citizens, an entire and perfect reciprocity in the United States, it follows, that Frenchmen are equally exempt in the United States from the like disabilities. They may, therefore, hold, succeed to, and dispose of, real estates.

It appears that the sense both of the French and of the American governments has corresponded with this construction.

In the year 1786, the Marquis Bellegarde and the Chevalier Meziere, sons of the two sisters of General Oglethorpe, represented to the Count de Vergennes, the French minister for foreign affairs, that they met with impediments to their claims from the laws of Georgia, prohibiting aliens to hold lands. Mr. de Vergennes communicated their complaint to Mr. Jefferson, our then minister in France, observing, that the alien disabilities of the complainants having, in common with those of all Frenchmen, been removed by the treaty between the two countries, they ought to experience no impediments on that account, in the succession to the estate of their uncle, and that the interfering laws of Georgia ought to be repealed so as to agree with the treaty.

Mr. Jefferson, in reply, states the case of the complainants, proving that they were precluded from the succession for other reasons than that of alienism: and then adds, that as the treaty with France having placed the subjects of France in the United States on a footing with natives, as to conveyances and *descents* of property, there is no necessity for the assemblies to pass laws on the subject, the treaty being a law, as he conceives, superior to those of particular assemblies, and repealing them when they stand in the way of its operation.

Where now, DECIUS, is thy mighty triumph? Where the trophies of thy fancied victory? Learn that in political, as well as other science,

> "Shallow draughts intoxicate the brain,
> And drinking largely sobers us again."

The fixing the true sense of the article in the treaty with Great Britain, is alone a refutation of most of the objections which have been made to it, by showing, that they apply not to what really exists, but to a quite different thing. It may be useful, however, to pass them briefly in review with some cursory remarks.

The article, it is said, infringes the rights of the States, and impairs the obligation of private contracts, permits aliens to hold real estates against the fundamental policy of our laws, and at the

hazard of introducing a dangerous foreign influence: is unequal, because no American has been hardy enough, since the peace, to purchase lands in England, while millions of acres have been purchased by British subjects in our country, with knowledge of the risk—is not warranted by the example of any other treaty we have made; for if even that of France should contain a similar provision (which is denied) still the difference of circumstances would make it an inapposite precedent; since this was a treaty made, *flagrante bello*, in a situation which justified *sacrifices*.

These objections have been formally and explicitly urged. One writer, afraid of risking a direct assertion, but insidiously endeavoring to insinuate misconception, contents himself with putting a question. What (says he) will be the effect of this article as to the revival of the claims of British subjects, traitors or exiles?

As to the infraction of the rights of the States, this, it is presumed, must relate to the depriving them of forfeitures of alien property. But as the article gives no right to a British subject to hold any lands which the laws of a State did not previously authorize him to hold—it prevents no forfeiture to which he was subject by them, and, consequently, deprives no State of the benefit of any such forfeiture. With regard to escheats for want of qualified heirs, it depended on every proprietor to avoid them by alienations to citizens.

As to impairing the obligation of private contracts, it is difficult to understand what is meant. Since land, purchased by an alien, passes from the former proprietor, and becomes forfeited to the State, can it be afterwards the subject of a valid private contract? If the effect of the article was to confirm a defective title derived from the alien, how could this impair the obligation of any other private contract concerning it? But whatever may be intended, it is enough to say, that the article does not confirm the title to any land which was not before good. So that the ground of the objection fails.

As to permitting aliens to hold land, contrary to the policy of our laws, it has been shown, that on a true construction, it only applies to the very limited case of the alien heirs and assigns

of persons who before rightfully held lands, and is confined to the identical lands so previously holden; that its greatest effect must be insignificant; and that this effect will continually decrease.

As to the millions of acres, said to have been purchased by British subjects since the peace, it has been shown, that if by the laws of the States in which the purchases were made, they were illegally acquired, they still remain in the situation in which they were before the treaty.

As to there being no precedent of a similar stipulation with any other country, it has been proved, that, with *France*, we have one much broader. The idea that this was a sacrifice to the necessity of our situation, *flagrante bello*, is new. Are we then to understand, that we in this instance gave to France, as the *price* of her assistance, a privilege in our country, which leads to the introduction of a foreign influence, dangerous to our independence and prosperity? For to this result tends the argument concerning the policy of the exclusion of aliens. Or is it, that no privilege, granted to France, can be dangerous?

Those who are not orthodox enough to adopt this last position, may, nevertheless, tranquillize themselves about the consequences. This is not the channel through which a dangerous foreign influence can assail us. Notwithstanding all that has been said, it may, perhaps, bear a serious argument, whether the permission to foreigners to hold lands in our country, might not, by the operation of private interest, give us more influence upon foreign countries, than they will ever acquire upon us, from the holding of those lands. Be this as it may, could we not appeal to some *good patriots*, as they style themselves, by way of eminence, for the truth of the observation, that foreign governments have more direct and powerful means of influence than can ever result from the right in question?

Moreover, there was a peculiar reason for the provision which has been made in our last treaty, not applicable to any treaty with another country. The former relative situation of the United States and Great Britain, led to the possession of lands by the citizens of each in the respective territories. It was

natural and just to secure by treaty their free transmission to the heirs and assigns of the parties.

As to the revival of the claims of traitors or exiles; if property, *confiscated* and *taken away*, is property *holden* by those who have been deprived of it, then there may be ground for alarm on this score. How painful is it to behold such gross attempts to deceive a whole people on so momentous a question! How afflicting, that imposture and fraud should be so often able to assume with success the garb of patriotism? And that this sublime virtue should be so frequently discredited by the usurpation and abuse of its name!

CAMILLUS.

NO. XVIII.

1795.

It is provided by the tenth article of the treaty, that "neither debts due from individuals of one nation to individuals of the other, nor shares, nor moneys, which they may have in the public funds, or in the public or private banks, shall ever, in any event of war, or national difference, be sequestered or confiscated; it being unjust and impolitic, that debts and engagements, contracted and made by individuals, having confidence in each other, and in their respective governments, should ever be destroyed or impaired by national authority on account of national differences and discontents."

The virulence with which this article has been attacked, cannot fail to excite very painful sensations in every mind duly impressed with the sanctity of public faith, and with the importance of national credit and character; at the same time that it furnishes the most cogent reasons to desire, that the preservation of peace may obviate the pretext and the temptation to sully the honor, and wound the interests of the country, by a measure which the truly enlightened of every nation would condemn.

I acknowledge, without reserve, that in proportion to the

vehemence of the opposition against this part of the treaty, is the satisfaction I derive from its existence, as an obstacle the more to the perpetration of a thing, which, in my opinion, besides deeply injuring our real and permanent interest, would cover us with ignominy. No powers of language, at my command, can express the abhorrence I feel at the idea of violating the property of individuals, which, in an authorized intercourse, in time of peace, has been confided to the faith of our government and laws, on account of controversies between nation and nation. In my view, every moral and every political sentiment unite to consign it to execration.

Neither will I dissemble, that the dread of the effects of the spirit which patronizes that idea, has ever been with me one of the most persuasive arguments for a pacific policy on the part of the United States. Serious as the evil of war has appeared, at the present stage of our affairs, the manner in which it was to be apprehended it might be carried on, was still more formidable, in my eyes, than the thing itself. It was to be feared, that in the fermentation of certain wild opinions, those wise, just, and temperate maxims, which will for ever constitute the true security and felicity of a state, would be overruled; and that a war upon credit, eventually upon property, and upon the general principles of public order, might aggravate and embitter the ordinary calamities of foreign war. The confiscation of debts due to the enemy, might have been the first step of this destructive process. From one violation of justice to another, the passage is easy. Invasions of right, still more fatal to credit, might have followed; and this, by extinguishing the resources which that could have afforded, might have paved the way to more comprehensive and more enormous depredations for a substitute. Terrible examples were before us; and there were too many not sufficiently remote from a disposition to admire and imitate them.

The earnest and extensive clamors against the part of the treaty under consideration, confirm that anticipation; and while they enhance the merit of the provision, they also inspire a wish, that some more effectual barrier had been erected against the possibility of a contrary practice being ever, at any ill-fated

moment, obtruded upon our public councils. It would have been an inestimable gem in our national constitution, had it contained a positive prohibition against such a practice, except, perhaps, by way of reprisal for the identical injury on the part of another nation.

Analogous to this is that liberal and excellent provision, in the British Magna Charta, which declares, that "if the merchants of a country at war with England, are found there in the beginning of the war, they shall be attached without harm of body or *effects*, until it is known in what manner English merchants are treated in the enemy's country; and if they are safe, that the foreign merchants shall also be safe."* The learned Lord Coke pronounces this to be *jus belli* or law of war:—And the elegant and the enlightened Montesquieu, speaking of the same provision, breaks out into this exclamation—"It is noble that the English nation have made this one of the articles of its liberty."† How much it is to be regretted, that our magna charta is not unequivocally decorated with a like feature; and that, in this instance, we, who have given so many splendid examples to mankind, are excelled in constitutional precaution for the maintenance of justice!

There is, indeed, ground to assert, that the contrary principle would be repugnant to that article of our Constitution, which provides, that "no State shall pass any law impairing the obligation of contracts." The spirit of this clause, though the letter of it be restricted to the States individually, must, on fair construction, be considered as a rule for the United States; and if so, could not easily be reconciled with the confiscation or sequestration of private debts in time of war. But it is a pity, that so important a principle should have been left to inference and implication, and should not have received an express and direct sanction.

* Si Mercatores sint de terra contra nos guerrira, et tales inveniantur in terra nostra in principio guerræ, attachientur sine damno corporum suorum vel *rerum*, donec sciatur a nobis vel a capitali justiciario nostro quo modo mercatores terræ nostræ tractantur qui tunc inveniantur in terra illa contra nos guerirra; et si nostri salvi sint ibi, alii salvi sint in terra nostra. Magna Charta, cap. xxx.

† Spirit of Laws, book xx., chap. 13.

This position must appear a frightful heresy in the eyes of those who represent the confiscation or sequestration of debts, as our best means of retaliation and coercion, as our most powerful, sometimes as our only means of defence.

But so degrading an idea will be rejected with disdain, by every man who feels a true and well-informed national pride; by every man who recollects and glories, that in a state of still greater immaturity, we achieved independence without the aid of this dishonorable expedient;* that even in a revolutionary war, a war of liberty against usurpation, our national councils were too magnanimous to be provoked or tempted to depart so widely from the path of rectitude; by every man, in fine, who, though careful not to exaggerate, for rash and extravagant projects, can nevertheless fairly estimate the real resources of the country, for meeting dangers which prudence cannot avert.

Such a man will never endure the base doctrine, that our security is to depend on the tricks of a swindler. He will look for it in the courage and constancy of a free, brave and virtuous people—in the riches of a fertile soil—an extended and progressive industry—in the wisdom and energy of a well-constituted and well-administered government—in the resources of a solid, if well-supported, national credit—in the armies, which, if requisite, could be raised—in the means of maritime annoyance, which, if necessary, could be organized, and with which we could inflict deep wounds on the commerce of a hostile nation. He will indulge an animating consciousness, that while our situation is not such as to justify our courting imprudent enterprises, neither is it such as to oblige us, in any event, to stoop to dishonorable means of security, or to substitute a crooked and piratical policy, for the manly energies of fair and open war.

* The federal government never resorted to it; and a few only of the state governments stained themselves with it. It may, perhaps, be said, that the federal goverment had no power on the subject; but the reverse of this is truly the case. The federal government alone had power. The state governments had none, though some of them undertook to exercise it. This position is founded on the solid ground that the confiscation or sequestration of the debts of an enemy is a high act of reprisal and war, necessarily and exclusively incident to the power of making war, which was always in the federal government.

That is the consequence of the favorite doctrine that the confiscation or sequestration of private debts is our most powerful, if not our only, weapon of defence! Great Britain is the sole power against whom we could wield it, since it is to her citizens alone, that we are largely indebted. What are we to do, then, against any other nation which might think fit to menace us? Are we, for want of adequate means of defence, to crouch beneath the uplifted rod, and, with abject despondency, sue for mercy? Or has Providence guaranteed us specially against the malice or ambition of every power on earth, except Great Britain?

It is at once curious and instructive to mark the inconsistencies of the disorganizing sect. Is the question, to discard a spirit of accommodation, and rush into war with Great Britain? Columns are filled with the most absurd exaggerations, to prove that we are able to meet her, not only on equal, but superior terms. Is the question, whether a stipulation against the confiscation or sequestration of private debts ought to have been admitted into the treaty? Then are we a people destitute of the means of war, with neither arms, nor fleets, nor magazines—then is our best, if not our only weapons of defence, the power of confiscating or sequestrating the debts which are due to the subjects of Great Britain; in other words, the power of committing fraud, of violating the public faith, of sacrificing the principles of commerce, of prostrating credit. Is the question, whether free ships shall make free goods, whether naval stores shall or shall not be deemed contraband? Then is the appeal to what is called the *modern* law of nations; then is the cry, that recent usage has changed and mitigated the rigor of ancient maxims. But is the question, whether private debts can be rightfully confiscated or sequestered? Then ought the utmost rigor of the ancient doctrine to govern, and modern usage and opinion to be discarded. The old rule or the new is to be adopted or rejected, just as may suit their convenience.

An inconsistency of another kind, but not less curious, is observable in positions, repeatedly heard from the same quarter, namely, that the sequestration of debts is the only peaceable

mean of doing ourselves justice and avoiding war. If we trace the origin of the pretended right to confiscate or sequester debts, we find it, in the very authority, principally relied on to prove it, to be this (Bynkershoeck, quæstiones juris publici, I. s. 2): "Since it is the *condition* of WAR, that ENEMIES may be deprived of all their rights, it is reasonable, that every thing of an enemy's, found among his enemies, should change its owner, and go to the treasury." Hence it is manifest, that the right itself, if it exist, presupposes, as the *condition* of its exercise, an *actual state of war*, the relation of *enemy to enemy*. Yet we are fastidiously and hypocritically told, that this high and explicit act of war, is a peaceable mean of doing ourselves justice and avoiding war. Why are we thus told? Why is this strange paradox attempted to be imposed upon us? Why, but that it is the policy of the conspirators against our peace, to endeavor to disguise the hostilities, into which they wish to plunge us, with a specious outside, and to precipitate us down the precipice of war, while we imagine we are quietly and securely walking along its summit.

Away with these absurd and incongruous sophisms! Blush, ye apostles of temerity, of meanness, and of deception! Cease to beckon us to war, and at the same time to freeze our courage by the cowardly declaration, that we have no resource but in fraud! Cease to attempt to persuade us, that peace may be obtained by means which are unequivocal acts of war. Cease to tell us, that war is preferable to dishonor, and yet, as our first step, to urge us into irretrievable dishonor. A magnanimous, a sensible people, cannot listen to your crude conceptions. Why will ye persevere in accumulating ridicule and contempt upon your own heads?

In the further observations which I shall offer on this article, I hope to satisfy, not the determined leaders or instruments of faction, but all discerning men, all good citizens, that, instead of being a blemish, it is an ornament to the instrument in which it is contained; that it is as consistent with true policy as with substantial justice; that it is, in substance, not without precedent in our other treaties, and that the objections to it are futile.

CAMILLUS.

NO. XIX.

1795.

The objects protected by the 10th article, are classed under four heads:—1. Debts of individuals to individuals; 2, property of individuals in the public funds; 3, property of individuals in public banks; 4, property of individuals in private banks. These, if analyzed, resolve themselves, in principle, into two discriminations, viz., private debts, and private property in public funds. The character of private property prevails throughout. No property of either government is protected from confiscation or sequestration by the other. This last circumstance merits attention, because it marks the true boundary.

The propriety of the stipulation will be examined under these several aspects: the right to confiscate or sequestrate private debts or private property in public funds, on the ground of reason and principle—the right as depending on the opinions of jurists and on usage—the policy and expediency of the practice—the analogy of the stipulation with stipulations in our other treaties, and in treaties between other nations.

First, as to the right on the ground of reason and principle.

The general proposition on which it is supported, is this, "That every individual of a nation, with whom we are at war, wheresoever he may be, is our enemy, and his property of every kind, in every place, liable to capture by right of war."

The only exception admitted to this rule, respects property within the jurisdiction of a neutral state; but the exemption is referred to the right of the neutral nation, not to any privilege which the situation gives to the enemy proprietor.

Reason, if consulted, will suggest another exception. This regards all such property as the laws of a country permit foreigners to acquire within it or to bring into it. The right of holding or having property in a country, always implies a duty on the part of its government to protect that property, and secure to the owner the full enjoyment of it. Whenever, therefore, a government grants permission to foreigners to acquire property

within its teritories, or to bring and deposit it there, it tacitly promises protection and security. It must be understood to engage, that the foreign proprietor, as to what he shall have acquired or deposited, shall enjoy the rights, privileges and immunities of a native proprietor, without any other exceptions than those which the established laws may have previously declared. How can any thing else be understood? Every state, when it has entered into no contrary engagement, is free to permit or not to permit foreigners to acquire or bring property within its jurisdiction; but if it grant the right, what is there to make the tenure of the foreigner different from that of the native, if antecedent laws have not pronounced a difference? Property, as it exists in civilized society, if not a creature of, is, at least, regulated and defined by, the laws. They prescribe the manner in which it shall be used, alienated, or transmitted; the conditions on which it may he held, perserved, or forfeited. It is to them we are to look for its rights, limitations, and conditions. No condition of enjoyment, no cause of forfeiture, which they have not specified, can be presumed to exist. An extraordinary discretion to resume or take away the thing, without any personal fault of the proprietor, is inconsistent with the notion of property. This seems always to imply a contract between the society and the individual; that he shall retain and be protected in the possession and use of his property, so long as he shall observe and perform the conditions which the laws have annexed to the tenure. It is neither natural nor equitable to consider him as subject to be deprived of it, for a cause foreign to himself: still less for one which may depend on the volition or pleasure, even of the very government to whose protection it has been confided: for the proposition, which affirms the right to confiscate or sequester, does not distinguish between offensive or defensive war; between a war of ambition on the part of the power which exercises the right, or a war of self-preservation against the assaults of another.

The property of a foreigner placed in another country, by permission of its laws, may justly be regarded as a deposit, of which the society is the trustee. How can it it be reconciled with

the idea of a trust, to take the property from its owner, when he has personally given no cause for the deprivation?

Suppose two families in a state of nature, and that a member of one of them had by permission of the head of the other, placed in his custody some article belonging to himself—and suppose a quarrel to ensue between the two heads of families, in which the member had not participated by his immediate counsel or consent—would not natural equity declare the seizure and confiscation of the deposited property to be an act of perfidious rapacity?

Again—suppose two neighboring nations, which had not had intercourse with each other, and one of them opens its ports and territories for the purpose of commerce, to the citizens of the other, proclaiming free and safe ingress and egress—suppose afterwards a war to break out between the two nations, and the one which had granted that permission, to seize and convert to its own use, the goods and credits of the merchants of the other, within its dominion. What sentence would natural reason, unwarped by particular dogmas, pronounce on such conduct? If we abstract ourselves from extraneous impressions, and consult a moral feeling, we shall not doubt that the sentence would inflict all the opprobrium and infamy of violated faith.

Nor can we distinguish either case, in principle, from that which constantly takes place between nations, that permit a commercial intercourse with each other, whether with or without national compact. They equally grant a right to bring into and carry out of their territories the property which is the subject of the intercourse, a right of free and secure ingress and egress; and in doing this, they make their territories a sanctuary or asylum, which ought to be inviolable, and which the spirit of plunder only could have ever violated.

There is no parity between the case of the persons and goods of enemies found in our own country, and that of the persons and goods of enemies found elsewhere. In the former there is a reliance upon our hospitality and justice; there is an express or implied safe conduct; the individuals and their property are

in the custody of our faith: they have no power to resist our will; they can lawfully make no defence against our violence; they are deemed to owe a temporary allegiance; and for endeavoring resistance, would be punished as criminals; a character inconsistent with that of an enemy. To make them a prey, is, therefore, to infringe every rule of generosity and equity; it is to add cowardice to treachery. In the latter case, there is no confidence whatever reposed in us; no claim upon our hospitality, justice or good faith; there is the simple character of enemy, with entire liberty to oppose force to force. The right of war consequently to attack and seize, whether to obtain indemnification for any injury received—to disable our enemy from doing us further harm—to force him to reasonable terms of accommodation—or to repress an overbearing ambition, exists in full vigor, unrestrained and unqualified by any trust or duty on our part. In pursuing it, though we may inflict hardship, we do not commit injustice.

Moreover, the property of the foreigner within our country may be regarded as having paid a valuable consideration for its protection and exemption from forfeiture; that which is brought in, commonly enriches the revenue by a duty of entry. All that is within our territory, whether acquired there or brought there, is liable to contributions to the treasury, in common with other similar property. Does there not result an obligation to protect that which contributes to the expense of its protection? Will justice sanction, upon the breaking out of a war, the confiscation of a property, which, during peace, serves to augment the resources and nourish the prosperity of a state?

The principle of the proposition gives an equal right to subject the person as the property of the foreigner to the rigors of war. But what would be thought of a government which should seize all the subjects of its enemy found within its territory, and commit them to durance, as prisoners of war? Would not all agree that it had violated an asylum which ought to have been sacred? That it had trampled upon the laws of hospitality and civilization? That it had disgraced itself by an act of cruelty

and barbarism?* Why would it not be equally reprehensible to violate the asylum which had been given to the property of those foreigners?

Reason, left to its own lights, would answer all these questions in one way, and severely condemn the molestation, on account of a national contest, as well of the property as person of a foreigner found in our country, under the license and guarantee of the laws of previous amity.

The case of property in the public funds is still stronger than that of private debts. To all the sanctions which apply to the latter, it adds that of an express pledge of the public faith to the foreign holder of stock.

The constituting of a public debt or fund, transferable without limitation or distinction, amounts to a promise to all the world, that whoever, foreigner or citizen, may acquire a title to it, shall enjoy the benefit of what is stipulated. Every transferee becomes, by the act of transfer, the immediate proprietor of the promise. It inures directly to his use, and the foreign promisee no more than the native, can be deprived of that benefit, except in consequence of some act of his own, without the infraction of a positive engagement.

Public debt has been truly defined, "*A property subsisting in the faith of government.*" Its essence is promise. To confiscate or sequester it is emphatically to rescind the promise given, to revoke the faith plighted—It is impossible to separate the two ideas of a breach of faith, and the confiscation or sequestration of a property subsisting only in the faith of the government by which it is made.

When it is considered, that the promise made to the foreigner is not made to him in the capacity of member of another society, but in that of citizen of the world, or of an individual in the state of nature—the infraction of it towards him, on account of the fault, real or pretended, of the society to which he belongs, is the more obviously destitute of color. There is no real affinity between the motive and the consequence. There is a confound-

* All that can rightfully be done, is to oblige the foreigners, who are subjects of our enemy, to quit our country.

ing of relations. The obligation of a contract can only be avoided by the breach of a condition express or implied, which appears or can be presumed to have been within the contemplation of both parties, or by the personal fault or crime of him to whom it is to be performed. Can it be supposed that a citizen of one country would lend his money to the government of another, in the expectation that a war between the two countries, which, without or against their will, might break out the next day, could be deemed a sufficient cause of forfeiture?

The principle may be tested in another way—Suppose one government indebted to another in a certain sum of money, and suppose the creditor government to borrow of the citizen of the other an equal sum of money. When he came to demand payment, would justice, would good faith, permit the opposing to his claim, by way of set-off, the debt due from his government? Who would not revolt at such an attempt? Could not the individual creditor answer with conclusive force, that in a *matter of contract* he was not responsible for the society of which he was a member, and that the debts of the society were not a proper set-off against his private claim?

With what greater reason could his claim be refused on account of an injury which was a cause of war, received from his sovereign, and which had created on the part of the sovereign a debt of reparation? It were certainly more natural and just to set off a debt due by contract to the citizen of a foreign country against a debt due by contract from the sovereign of that country, than to set it off against a vague claim of indemnification for an injury or aggression of which we complain, and of which the reality or justice is seldom undisputed on the other side.

The true rule which results from what has been said, and which reason sanctions with regard to the right of capture, is this—"It may be exercised every where *except within a neutral jurisdiction* or where the property is under the protection of our own*

* There are exceptions to this exception; but they depend on special circumstances, which admit the principal exception, and need not be particularized.

laws;" and it may perhaps be added that it always supposes the possibility of *rightful* combat, of attack, and defence.

These exceptions involve no refinement—they depend on obvious considerations, and are agreeable to common sense and to nature—the spontaneous feelings of equity accord with them. It is, indeed, astonishing that a contrary rule should ever have been countenanced by the opinion of any jurist, or by the practice of any civilized nation.

We shall see in the next number how far either has been the case, and what influence it ought to have upon the question.

CAMILLUS.

NO. XX.

1795.

The point next to be examined is the right of confiscation or sequestration, as depending on the opinions of jurists and on usage.

To understand how far these ought to weigh, it is requisite to consider what are the elements or ingredients, which compose what is called the law of nations.

The constituent parts of this system are, 1. The *necessary* or internal law, which is the *law of nature* applied to nations; or that system of rules for regulating the conduct of nation to nation, which reason deduces from the principles of natural right, as relative to political societies or states. 2. The *voluntary* law, which is a system of rules resulting from the equality and independence of nations, and which, in the administration of their affairs, and the pursuit of their pretensions, proceeding on the principle of their having no common judge upon earth, attributes equal validity, as to external effects, to the measures or conduct of one as of another, without regard to the intrinsic justice of those measures or that conduct. Thus captures, in war, are as valid, when made by the party in the wrong, as by the party in the right. 3. The *pactitious* or *conventional* law, or that law

which results from a treaty between two or more nations. This is evidently a particular, not a general law, since a treaty or pact can only bind the contracting parties: yet, when we find a provision universally pervading the treaties between nations, for a length of time, as a kind of formula, it is high evidence of the general law of nations. 4. The customary law, which consists of those rules of conduct, that, in practice, are respected and observed among nations. Its authority depends on usage, implying a tacit consent and agreement. This also is a particular, not a general law, obligatory only on those nations whose acquiescence has appeared, or, from circumstances, may fairly be presumed. Thus, the customary law of Europe may not be that of a different quarter of the globe. The three last branches are sometimes aggregately denominated the *positive* law of nations.

The two first are discoverable by reason; the two last depend on proof, as matters of fact. Hence the opinion of jurists, though weighing, as the sentiments of judicious or learned men, who have made the subject a particular study, are not conclusive, as authorities.—In regard to the *necessary* and *voluntary* law, especially, they may be freely disregarded, unless they are found to be adopted and sanctioned by the practice of nations: For where REASON is the guide, it cannot properly be renounced for mere OPINION, however respectable. As witnesses of the customary laws, their testimony, the result of careful researches, is more particularly entitled to attention.

If, then, it has been satisfactorily proved, as the dictate of sound reason, that private debts, and private property in public funds, are not justly liable to confiscation or sequestration, an opposite opinion of one or more jurists could not control the conclusion in point of principle. So far as it may attest a practice of nations, which may have introduced a positive law on the subject, the consideration may be different. It will then remain to examine, upon their own and other testimony, whether that practice be so general as to be capable of varying a rule of reason, by the force of usage; and whether it still continues to bear the same character, or has been weakened or done away by some recent or more modern usage.

I will not avail myself of a position, advanced by some writers, that usage, if derogating from the principles of natural justice, is null, further than to draw this inference, that a rule of right, deducible from them, cannot be deemed to be altered by usage, partially contradicted, fluctuating.

With these guides, our further inquiries will serve to confirm us in the negative of the pretended right to confiscate or sequester in the cases supposed.

The notion of this right is evidently derived from the ROMAN law. It is seen there, in this peculiar form: "Those things of an enemy which are among us, belong not to the state, but to the first occupant,"* which seems to mean, that the things of an enemy, at the commencement of the war, found in our country, may be seized by any citizen, and will belong to him who first gets possession. It is known, that the maxims of the Roman law are extensively incorporated into the different codes of Europe; and particularly, that the writers on the law of nations have borrowed liberally from them. This source of the notion does not stamp it with much authority. The history of Rome proves, that war and conquest were the great business of that people, and that, for the most part, commerce was little cultivated. Hence it was natural, that the rights of war should be carried to an extreme, unmitigated by the softening and humanizing influence of commerce. Indeed the world was yet too young—moral science too much in its cradle—to render the Roman jurisprudence a proper model for implicit imitation: accordingly, in this very particular of the rights of war, it seems to have been equally a rule of the Roman law, "That those who go into a foreign country, in time of peace, if war is suddenly kindled, are made the slaves of those among whom, now become enemies by ill fortune, they are apprehended."† This right of capturing the property and of making slaves of the persons of enemies is referred, as we learn from *Cicero*, to the right of killing them; which was regarded as abso-

* Digest. XLI. tit. I. "Et quæ res hostiles apud nos," &c.

† "In pace qui pervenerunt ad alteros, si bellum subito exarcisset, eorum servi efficiuntur, apud quos jam hostes suo facto deprehenduntur." Digest, lib. XLIX. tit. XV. l. xii.

lute and unqualified, extending even to women and children. Thus it would seem, that, on the principle of the Roman law, we might rightfully kill a foreigner, who had come into our country during peace, and was there at the breaking out of a war with his country—Can there be a position more horrible, more detestable?

The improvement of moral science in modern times, restrains the right of killing an enemy to the time of battle or resistance, except by way of punishment for some enormous breach of the law of nations, or for self-preservation, in case of immediate and urgent danger; and rejects altogether the right of imposing slavery on captives.

Why should there have been a hesitation to reject other odious consequences of so exceptionable a principle? What respect is due to maxims which have so inhuman a foundation?

And yet a deference for those maxims has misled writers who have professedly undertaken to teach the principles of national ethics; and the spirit of rapine has continued, to a late period, to consecrate the relics of ancient barbarism with too many precedents of imitation—Else it would not now be a question with any, "Whether the person or property of a foreigner, being in our country with permission of the laws of peace, could be liable to molestation or injury by the laws of war—merely on account of the war?"

Turning from the ancients to the moderns, we find, that the learned Grotius quotes and adopts, as the basis of his opinions, the rules of the Roman law; though he, in several particulars, qualifies them, by the humane innovations of later times.

On the very question of the right to confiscate or sequester private debts, his opinion, as far as it appears, seems to be at variance with his premises, steering a kind of middle course. His expressions (L. III. C. XX. Sec. XVI.) are these. "Those debts which are due to private persons, at the beginning of the war, are not to be accounted forgiven (that is, when peace is made); for these are not acquired by the right of war, but only *forbidden to be demanded* in time of war; therefore, the *impediment*

being removed, that is, the war ended, they retain their full force." His idea appears from this passage to be, that the right of war is limited to the arresting of the payment of private debts during its continuance, and not to the confiscation or annihilation of the debt. Nor is it clear, whether he means, that this arrestation is to be produced by a special act of prohibition, or by the operation of some rule of law, which denies to an alien enemy a right of action. This feeble and heterogeneous opinion may be conceived to have proceeded from a conflict between a respect for ancient maxims, and the impression of more enlightened views, inculcated by the principles of commerce and civilization.

Bynkershoeck is more consistent: Adopting, with Grotius, the rule of the Roman law in its full vigor, he is not frightened at the consequences, but follows them throughout. Hence he bestows a chapter upon the defence of the proposition, quoted in a former number (to wit), that * "Since it is the condition of war, that enemies may, with full right, be despoiled and proscribed, it is reasonable that whatsoever things of an enemy are found among his enemies, should change their owner and go to the treasury;" and in several places he expressly applies the rule to *things in action*, or debts and credits, as well as to things in possession.

In confirmation of his doctrine, he adduces a variety of examples, which embrace a period of something more than a century, beginning in the year 1556, and ending in the year 1657, and which comprehends, as actors on the principle which he espouses, France, Spain, the States General, Denmark, the bishops of Cologne and Munster. But he acknowledges that the right has been questioned; and notes particularly, that when the king of France and the bishops of Munster and Cologne, in the year 1563, confiscated the debts which their subjects owed to the confederate Belgians, the states general, by an edict of the 6th of July, of that year, censured the proceeding, and decreed

* Quæstionum Juris Public. liber I. caput VII. "Cum ea sit belli conditio ut hostes sint omni jure spoliati proscriptique, rationis est quascumque res hostium apud hostes inventas, dominum mutare et fisco cedere."

that those debts could not be paid but to the true creditors, and that the exaction of them, whether by force or with consent, was not to be esteemed valid.

If from the great pains which appear to have been taken by this learned writer, to collect examples in proof of his doctrine, we are to conclude that the collection is tolerably complete, we are warranted in drawing this inference, that he has not cured any defect, which reason may discern in his principle, by any thing like the evidence of such a general, uniform, and continued usage, as is requisite to introduce *a rule* of the positive law of nations, in derogation from the natural.

A minority only of the powers of Europe are shown to have been implicated in the practice; and among the majority, not included, are several of the most considerable and respectable. One of these, Great Britain, is represented as having acquiesced in it, in the treaties of peace, between her and some of the powers who went into the practice, to her detriment, by relinquishing the claim of restitution—But war must, at length, end in peace; and the sacrifice a nation makes to the latter, is a slight argument of her consent to the principle of the injuries which she may have sustained. I have not been able to trace a single instance in which Great Britain has, herself, set the example of such a practice; nor could she do it, as has elsewhere appeared, without contravening an article of magna charta, unless by way of reprisal for the same thing done towards her. The suggestion of an instance in the present war with France, will, hereafter, be examined. In such a question, the practice of a nation, which has, for ages, figured pre-eminently in the commercial world, is entitled to particular notice.

It is not unworthy of remark, that the common law of England, from its earliest dawnings, contradicted the rule of the Roman law. It exempted from seizure, by a subject of England, the property of a foreigner brought there before a war; but gave to the first seizer, or occupant, the property which came there after the breaking out of a war. The noble principles of the common law cannot cease to engage our respect, while we have before our eyes so many monuments of their excellence in our own jurisdiction.

It also merits to be dwelt upon, that the United Netherlands, for some time the first, and long only the second in commercial consequence, formally disputed the right, and condemned the practice of confiscating private debts, though themselves, in some instances, guilty of it.

And it is likewise a material circumstance, that Bynkershoeck, who seems to have written in the year 1737, does not adduce any precedent later than the year 1667, seventy years before his publication.

The subsequent period will, it is believed, be found upon strict inquiry, equally barren of similar precedents. The exceptions are so few,* that we may fairly assert, that there is the negative usage of near a century and a half, against the pretended right. This negative usage, of a period, the most enlightened as well as the most commercial in the annals of the world, is of the highest authority. The former usage, as being partial and with numerous exceptions, was insufficient to establish a rule. The contrary usage, or the renunciation of the former usage, as being general, as attended with few or no exceptions, is sufficient even to work a change in the rigor of an ancient rule, if it could be supposed to have been established. Much more is it sufficient to confirm and enforce the lesson of reason, and to dissipate the clouds which error, and some scattered instances of violence and rapine, may have produced.

Of the theoretical writers, whom I had an opportunity of consulting, Vattel is the only remaining one, who directly treats the point. His opinion has been said to favor the right to confiscate and sequester. But when carefully analyzed, it will add to the proofs of the levity with which the opposers of the treaty make assertions.

After stating, among other things, that "war gives the same right over any sum of money due by a neutral nation to our enemy, as it can give over his other goods," he proceeds thus—"When Alexander, by conquest, became absolute master of Thebes, he remitted to the Thessalians, a hundred talents, which

* The case of Prussia and the Silesia loan, is the only one I have found.

they owed to the Thebans. The sovereign has naturally the same right over what his subjects may be indebted to his enemies; therefore he may confiscate debts of this nature, if the term of payment happen in the time of war; or, at least, he may prohibit his subjects from paying, while the war lasts. But at present, in regard to the advantage and safety of commerce, all the sovereigns of Europe have departed from this rigor. And as this custom has been generally received, he who should act contrary to it, would injure the public faith; for strangers trusted his subjects only from a firm persuasion, that the general custom would be observed. The state does not so much as touch the sums which it owes to the enemy. Every where, in case of a war, funds credited to the public, are exempt from confiscation and seizure."*

The first proposition of the above passage, amounts to this, that "a sovereign *naturally*, that is, according to the law of nature, may confiscate debts, which his subjects owe to his enemies, if the term of payment happen in the time of war; or, at least, he may prohibit his subjects from paying while the war lasts."

So far as this goes, it agrees with the principle which I combat, that there is a natural right to confiscate or sequester private debts in time of war; so far Vattel accords with the Roman law and with Bynkershoeck.

But he annexes a whimsical limitation, "If the term of payment happen in the time of war"—and there is a marked uncertainty and hesitation—the sovereign "may confiscate, or, at least, he may prohibit his subjects from paying while the war lasts." It is evident, that the circumstance of the time of payment can have no influence upon the right. If it reaches to confiscation, which takes away the substance of the thing, the mere incident of the happening of payment must be immaterial. If it is confined to the arresting of payment during the war, the reason of the rule, the object being to prevent supplies going to the enemy, will apply it as well to debts which had become pay-

* Book III. Chap. 5, sec. 77.

able before the war, as to those which became payable in the war. Whence this inaccuracy in so accurate a thinker? Whence the hesitation about so important a point, as whether the pretended right extends to confiscation or simply to sequestration? They must be accounted for, as in another case, by the conflict between respect for ancient maxims and the impressions of juster views, seconded by the more enlightened policy of modern times.

But while Vattel thus countenances, in the first part of the passage, the opinion, that the natural law of nations authorizes the confiscation or sequestration of private debts, in what immediately follows, he most explicitly and unequivocally informs us, that the rule of that law in this respect has been abrogated by modern usage or custom; in other words, that the modern customary law has changed in this particular the ancient natural law. Let his own words be consulted—"At present," says he, "in regard to the advantage and safety of commerce, all the sovereigns of Europe have departed from this rigor: and as this custom has been generally received, he who would act contrary to it, would injure the public faith; for strangers trusted his subjects only from the firm persuasion that the general custom would be observed."

This testimony is full, that there is a general custom received and adopted by all the sovereigns of Europe, which obviates the rigor of the ancient rule; the non-observance of which custom would violate the public faith of a nation; as being a breach of an implied contract, by virtue of the custom, upon the strength of which foreigners trust his subjects.

Language cannot describe more clearly a rule of the customary law of nations, the essence of which, we have seen, is general usage, implying a tacit agreement to conform to the rule. The one alleged is denominated a custom generally received, a general custom; all the sovereigns of Europe are stated to be parties to it, and it is represented as obligatory on the public faith, since this would be injured by a departure from it.

The consequence is, that if the right pretended did exist by the natural law, it has given way to the customary law; for it

is a contradiction, to call that a right, which cannot be exercised without breach of faith. The result is, that by the present customary law of nations, within the sphere of its action, there is no right to confiscate or sequester private debts in time of war. The reason or motive of which law is the advantage and safety of commerce.

As to private property in public funds, the right to meddle with them is still more emphatically negatived. "The state does not *so much as touch* the sums it owes to the enemy. *Every where*, in case of a war, funds credited to the public are exempt from confiscation and seizure." These terms manifestly exclude sequestration as well as confiscation.

In another place, the author gives the reason of this position, Book II. Chap. XVIII. "In reprisals, the goods of a subject are seized in the same manner as those of the state or the sovereign. Every thing that belongs to the nation is liable to reprisals as soon as it can be seized, *provided it be not a deposit trusted to the public faith.* This DEPOSIT is found in our hands, only in consequence of that *confidence*, which the proprietor has put in our good faith, and it ought to be respected, even in case of open war. Thus it is usual to behave in France, England, and elsewhere, with respect to the money which foreigners have placed in the public funds." The same principle, if he had reflected without bias, would have taught him, that reprisals could rightfully extend to nothing that had been committed with their permission, to the custody and guardianship of our laws, during a state of peace; and, consequently, that no property, of our enemy, which was in our country before the breaking out of the war, is justly liable to them. For is not all such property *equally a deposit, trusted to the public faith?* What foreigner would acquire property in our country, or bring and lodge it there, but in the *confidence*, that in case of war, it would not become an object of reprisals? Why then resort to custom for a denial of the right to confiscate or sequester private debts? Why not trace it to the natural injustice and perfidy of taking away in war, what a foreigner is permitted to own and have among us in peace? Why ever have considered that as a natural right which was

contrary to good faith tacitly pledged? This is evidently the effect of too much deference to ferocious maxims of antiquity, of undue complaisance to some precedents of modern rapacity.

He had avoided the error, by weighing maturely the consequences of his own principle in another case: "He who declares war (says he) does not confiscate the *immovable* goods possessed in his country by his enemy's subjects: *in permitting them to purchase and possess those goods*, he has, in this respect, admitted them into the number of his subjects," (that is) he has admitted them to a like privilege with his subjects, as to the real property they were permitted to acquire and hold. But, why should a less privilege attend the license to purchase, possess, or have other kinds of property in his country? The reason, which is, the permission of the sovereign, must extend to the protection of one kind of property as well as another, if the permission extends to both.

Vattel advances in this and in the passage quoted immediately before it, the true principles which ought to govern the question —though he does not pursue them into their consequences; else he would not have deduced the exemption of private debts, from confiscation or sequestration, from the customary law of nations, but would have traced it to the natural or necessary law, as founded upon the obligations of good faith; upon the tacit promise of security connected with the permission to acquire property within, or bring property into, our country; upon the protection which every government owes to a property of which it legalizes the acquisition, or the deposit within its jurisdiction; and in case of *immovable* goods or real estate, of which he admits a right to sequester the *income*, to prevent its being remitted to the enemy, he would have perceived the necessity of leaving this effect to be produced by the obstructions intrinsically incident to a state of war; since there is no reason why the income should be less privileged than the substance of the thing.

It appears, then, that the doctrine of Vattel, collectively taken, amounts to this, that there is a natural right of war in certain cases to confiscate or sequester enemy's property found within our country; but that, on motives relative to commerce

and public credit, the customary law of Europe has restrained that right, as to *private debts*, and *private property*, in public funds. His opinion, therefore, favors the principle of the article of the treaty under examination, as consonant with the present European law of nations—and it is an opinion of greater weight than any that can be cited; as well on account of the capacity, diligence, information, and the precision of ideas, which characterize the work in which it is contained, as on account of the recency of that work.*

A question may be raised—Does this customary law of nations, as established in Europe, bind the United States? An affirmative answer to this is warranted by conclusive reasons.

1. The United States, when a member of the British empire, were, in this capacity, a party to that law, and not having dissented from it, when they became independent, they are to be considered as having continued a party to it. 2. The common law of England, which was and is in force in each of these States, adopts the law of nations, the positive equally with the natural, as a part of itself. 3. Ever since we have been an independent nation, we have appealed to, and acted upon, the *modern* law of nations as understood in Europe—various resolutions of Congress during our revolution—the correspondences of executive officers—the decisions of our courts of admiralty, all recognized this standard. 4. Executive and legislative acts, and the proceedings of our courts, under the present government, speak a similar language. The President's proclamation of neutrality, refers expressly to the *modern* law of nations, which must necessarily be understood of that prevailing in Europe, and acceded to by this country; and the general voice of our nation, together with the very arguments used against the treaty, accord in the same point. It is indubitable, that the customary law of European nations is, as a part of the common law, and by adoption, that of the United States.

But let it not be forgotten, that I derive the vindication of the article from a higher source, from the natural or necessary law

* It appears to have been written about the year 1760.

of nature—from the eternal principles of morality and good faith.

There is one more authority which I shall cite in reference to a part of the question; property in the public funds. It is a report of the British king in the year 1753, from Sir George Lee, judge of the prerogative court, Dr. Paul, advocate-general in the courts of civil law, Sir Dudley Rider and Mr. Murray, attorney and solicitor-general,* on the subject of the Silesia loan, sequestered by the king of Prussia, by way of reprisal, for the capture and condemnation of some Prussian vessels. This report merits all the respect which can be derived from consummate knowledge and ability in the reporters; but it would lose much of its weight from the want of impartiality, which might fairly be imputed to the officers of one of the governments interested in the contest, had it not since received the confirming eulogies of impartial and celebrated foreign writers. Among these, Vattel calls it an excellent piece on the law of nations.

The following is an extract:—"The king of Prussia has pledged his royal word to pay the Silesia debt to *private men.* It is negotiable, and many parts of it have been assigned to the subjects of other powers. It will not be easy *to find an instance,* where a prince has thought fit to make reprisals upon *a debt due from himself to private men.* There is a *confidence that this will not be done.* A private man lends money to a prince upon an *engagement of honor; because a prince cannot be compelled, like other men, in an adversary way, by a court of justice.* So scrupulously did England and France adhere to this *public faith,* that even during the war, they suffered no inquiry to be made, whether any part of the public debt was due to the subjects of the enemy, though it is certain many English had money in the French funds, and many French had money in ours."

The universal obligation of good faith is here reinforced on a special ground, by the *point of honor;* to confirm the position that money which a sovereign or state owes to private men, is not a proper object of reprisals.

* Sir George Lee, was afterwards the very celebrated Chief Justice Lee, and Mr. Murray was the late Lord Mansfield.

This case of the Silesia debt is the only example, within the present century, prior to the existing war, which I have been able to trace, violating the immunity of private debts, or private property, in public funds. It is a precedent that can have little weight, not only from singularity, but from the character of its author. Frederick was a consummate general, a profound statesman; but he was very far from being a severe moralist. This is not the only instance in which he tarnished his faith; and the friends of his fame must regret, that he could not plead on the occasion those mighty and dazzling reasons of state, which are the specious apologies for his other aberrations.

It is asserted, that the present war of Europe affords examples of the practice, which I reprobate, and that Great Britain herself has given one. The present war of Europe is of so extraordinary a complexion, and has been conducted, in all respects, upon such extraordinary principles, that it may truly be regarded as an exception to all general rules, as a precedent for nothing. It is rather a beacon, warning mankind to shun the pernicious examples, which it sets, than a model inviting to imitation. The human passions, on all sides, appear to have been wrought up to a pitch of frenzy, which has set reason, justice, and humanity, at defiance.

Those who have nevertheless thought fit to appeal to the examples of this very anomalous war, have not detailed to us the precise nature or course of the transactions to which they refer; nor do I know that sufficient documents have appeared in this country to guide us in the inquiry.

The imperfect evidence which has fallen under my observation, respects France and Great Britain, and seems to exhibit these facts:—

France passed a decree sequestering the property of the subjects of the powers at war with her; and in the same or another decree, obliged all those of her citizens, who had moneys owing to them in foreign countries, to draw bills upon their debtors, and to furnish those bills to the government, by way of loan, or upon certain terms of payment.

The government of Great Britain, in consequence of this pro-

ceeding, passed ten different acts, the objects of which were to prevent the payment of those bills, and to secure the sums due for the benefit of the original creditors. These acts appoint certain commissioners, to whom reports are to be made of all French property in the hands of British subjects, and who are empowered to receive and sell goods and other effects—to collect debts, and to deposit the proceeds in the bank of London, or in other safe keeping, if preferred or required by parties interested. The moneys deposited are to be invested in the purchase of public stock, together with the interest or dividends arising from time to time, to be eventually accounted for to the proprietors. The commissioners have, likewise, a discretion, upon demand, to deliver over their effects and moneys to such of the proprietors as do not reside within the French dominions.

I shall not enter into a discussion of the propriety of these acts of Great Britain.—It is sufficient to observe, that they are attended with circumstances which very essentially discriminate them from the thing for which they were quoted. The act of the French government was in substance a compulsory assumption of all the property of its citizens in foreign countries. This extraordinary measure presented two options to the governments of those countries—One, to consider the tranfer as virtually effected, and to confiscate the property as being no longer that of the individuals, but that of the government of France—the other, to defeat the effect of her plan by buying up the property for the benefit of the original creditors, in exclusion of the drafts which they were compelled to draw. Great Britain appears to have elected the latter course. If we suppose her sincere in the motive, and there is fairness and fidelity in the execution, the issue will be favorable, rather than detrimental, to the rights of private property.

I have said, that there was an option to confiscate. A government may rightfully confiscate the property of an adversary government. No principle of justice or policy occurs to forbid reprisals upon the public or national property of an enemy. That case is foreign, in every view, to the principles which protect private property. The exemption stipulated by the 10th article of the treaty is accordingly restricted to the latter.

It appears, that the government of France, convinced by the effect of the experiment, that the sequestration of the property of the subjects of her enemies was impolitic, thought fit to rescind it.—Thence, on the 29th of December, 1794, the convention decreed as follows:

"The decrees concerning sequestration of the property of the subjects of the powers at war with the republic, are annulled. Such sums as have been paid by French citizens into the treasury, in consequence of those decrees, will be reimbursed."

In the course of the debates upon this decree, it was declared, that the decrees which it was to repeal, *had prepared the ruin of commerce*, and had severed, *against the rights of nations*, the *obligations* of merchants in different states. This is a direct admission, that the sequestration was contrary to the law of nations.

As far as respects France, then, the precedent, upon the whole, is a strong condemnation of the pretended right to confiscate or sequester. This formal renunciation of the ground which was at first taken, is a very emphatical protest against the principle of the measure—It ought to serve us too as an instructive warning against the employment of so mischievous and disgraceful an expedient. And as to England, as has been shown, the precedent is foreign to the question.

Thus we perceive, that *opinion* and *usage*, far from supporting the right to confiscate or sequester private property, on account of national wars, when referred to the *modern* standard, turn against that right, and coincide with the principle of the article of the treaty under examination.

What remains to be offered will farther illustrate its propriety, and reconcile it to all reflecting men.

CAMILLUS.

NO. XXI.

1795.

Since the closing of my last number, I have accidentally turned to a passage of *Vattel*, which is so pertinent to the immediate

subject of that paper, that I cannot refrain from interrupting the progress of the discussion, to quote it; it is in these words (b. 3, ch. 4, sec. 63): "The sovereign, declaring war, can neither detain those *subjects* of the enemy, who are within his dominions at the time of the declaration, *nor their effects.* They came into his country *on the public faith. By permitting them to enter his territories, and continue there, he tacitly promised them liberty, and security for their return.*" This passage contains, explicitly, the principle which is the general basis of my argument, namely, that the permission to a foreigner to come with his effects into, and acquire others within our country, in time of peace, virtually pledges the public faith for the security of his person and property, in the event of war. How can this be reconciled with the *natural* right (controlled only by the customary law of nations) which this writer admits, to confiscate the debts due by the subjects of a state to its enemies? I ask once more, can there be a natural right to do that which includes a violation of faith?

It is plain, to a demonstration, that the rule laid down in this passage, which is so just and perspicuous as to speak conviction to the heart and understanding, unites the natural with the customary law of nations, in a condemnation of the pretension to confiscate or sequester the private property of our enemy, found in our country at the breaking out of a war.

Let us now proceed to examine the policy and expediency of such a pretension.

In this investigation, I shall assume, as a basis of argument, the following position, *That it is advantageous to nations to have commerce with each other.*

Commerce, it is manifest, like any other object of enterprise or industry, will prosper in proportion as it is secure. Its security, consequently, promoting its prosperity, extends its advantages. Security is indeed essential to its having a due and regular course.

The pretension of a right to confiscate or sequester the effects of foreign merchants, in the case in question, is, in its principle, fatal to that necessary security. Its free exercise would destroy external commerce; or, which is nearly the same thing, reduce

it within the contracted limits of a game of hazard, where the chance of large profits, accompanied with the great risks, would tempt alone the adventurous and the desperate. Those enterprises, which, from circuitous or long voyages, slowness of sales, incident to the nature of certain commodities, the necessity of credit, or from other causes, demand considerable time for their completion, must be renounced. Credit, indeed, must be banished from all the operations of foreign commerce; an engine, the importance of which, to its vigorous and successful prosecution, will be doubted by none, who will be guided by experience or observation.

It cannot need amplification, to elucidate the truth of these positions. The storms of war occur so suddenly and so often, as to forbid the supposition, that the merchants of one country would trust their property, to any extent, or for any duration, in another country, which was in the practice of confiscating or sequestering the effects of its enemies, found within its territories, at the commencemnt of a war. That practice, therefore, would necessarily paralyze and wither the commerce of the country in which it obtained. Accordingly, nations attentive to the cultivation of commerce, which formerly were betrayed, by temporary considerations, into particular instances of that atrocious practice, have been led, by the experience of its mischiefs, to abstain from it in later times. They saw that to have persis ed in it would have been to abandon competition on equal terms, in the lucrative and beneficial field of commerce.

It is no answer to this, to say that the exercise of the right might be ordinarily suspended, though the right itself might be maintained, for extraordinary and great emergencies.

In the first place, as the ordinary forbearance of its exercise would be taken by foreigners for evidence of an intention never to exercise it, by which they would be enticed into large depositos, that would not otherwise have taken place; a departure from the general course would always involve an act of treachery and cruelty.

In the second place, the *possibility* of the occasional exercise of such a right, if conceived to exist, would be, at least, a slow

poison, conducing to a sickly habit of commerce; and, in a series of time, would be productive of much more evil than could be counterbalanced by any good which it might be possible to obtain in the contemplated emergency, by the use of the expedient.

Let experience decide. Examples of confiscation and sequestration have been given. When did the dread of them prevent a war? When did it cripple an enemy, so as to disable him from exertion, or force him into a submission to the views of his adversary? When did it even sensibly conspire to either of these ends? If it has ever had any such effect, the evidence of it has not come within my knowledge.

It is true, that between Great Britain and the United States, the expectation of such effects is better warranted than perhaps in any other cases that have existed; because we commonly owe a larger debt to that country, than is usual between nations, and there is a relative state of things, which tends to a continuation of this situation.

But how has the matter operated hitherto? In the late war between the two countries, certain states confiscated the debts due from their citizens to British creditors, and these creditors actually suffered great losses. The British cabinet must have known, that it was possible the same thing might happen in another war, and on a more general scale; yet the appearances were extremely strong, at a particular juncture, that it was their plan, either from ill-will, from the belief that popular opinion would ultimately drag our government into the war, from the union of these two, or from other causes, to force us into hostilities with them. Hence it appears, that the apprehension of acts of confiscation, or sequestration, was not sufficient to deter from hostile views, or to insure pacific dispositions.

It may be pretended, that the menace of this measure, had a restraining influence on the subsequent conduct of Great Britain. But if we ascribe nothing to the measures which our government actually pursued, under the pressure of the provocations received, we at least find, in the course of European events, a better solution of a change of policy in the cabinet of Great Britain,

than from the dread of a legislative piracy on the debts due to their merchants.

The truth unfortunately is, that the passions of men stifle calculation; that nations the most attentive to pecuniary considerations, easily surrender them to ambition, to jealousy, to anger, or to revenge.

For the same reason, the actual experiment of an exercise of the pretended right, by way of reprisal for an injury complained of, would commonly be as inefficacious, as the menace of it, to arrest general hostilities. Pride is roused; resentment kindled; and where there is even no previous disposition to those hostilities, the probability is, that they follow. Nations, like individuals, ill brook the idea of receding from their pretensions under the rod, or of admitting the justice of an act of retaliation or reprisal, by submitting to it. Thus we learn, from the king of Prussia himself, that the sequestration of the Silesia debt, instead of procuring the restoration for which it was designed, was on the point of occasioning an open rupture between him and Great Britain, when the supervention of a quarrel with France diverted the storm, by rendering him necessary as an ally.

Perhaps it may be imagined, that the practice of confiscation or sequestration would be more efficacious to wound and disable Great Britain, in case of a war, than to prevent it. But this also is a vain chimera! A nation, that can, at pleasure, raise by loan twenty millions sterling, would be in little danger of being disconcerted or enfeebled in her military enterprises, by the taking away or arresting of three or four millions due to her merchants. Did it produce distress and disorder among those whom it affected and their connections? If that disorder was sufficient to threaten a general derangement of mercantile credit, and, with it, of the public finances, the pending war affords an example, that the public purse or credit could be brought successfully into action for the support of the sufferers. Three or four millions of exchequer bills applied in loans, would be likely to suffice, to prevent the partial evil from growing into a national calamity.

But we forget, that as far as the interruption of the pay-

ment of the debts due to her merchants could be supposed to operate upon Great Britain, war itself would essentially answer the purposes of confiscation or sequestration—by interrupting trade and intercourse, it is in fact, in a great degree, a virtual sequestration. Remittances to any extent become impracticable. There are few ways, in which, on account of the state of war, it is lawful to make them; and debtors are, for the most part, enough disposed to embrace pretexts of procrastination.

The inconvenience of deferred payment would, therefore, be felt by Great Britain, with little mitigation, from the bare existence of war, without the necessity of our government incurring the discredit and responsibility of a special interference.

Indeed, as far as the dread of eventual loss can operate, it ought, in a great measure to have its effect exclusive of the idea of confiscation. Great Britain must want reflection, not to be sensible, that in making war upon us, she makes war upon her own merchants; by the depredations upon our trade destroying those resources from which they are to be paid. If she be indifferent to this consideration, it will be because she is governed by some motive or passion powerful enough to dispose her to run the risk of the entire loss—in the reliance of obtaining indemnification by the acquisitions of war, or in the terms of peace.

Will it be said that the seizure of the debts would put in the hands of our government a valuable resource for carrying on the war? This, upon trial, would prove as fallacious as all the rest. Various inducements would prevent debtors from paying into the treasury. Some would decline it from conscientious scruples, from a doubt of the rectitude of the thing—others, with intent to make a merit with their creditors of the concealment, and to favor their own future credit and advantage—others, from a desire to retain the money in their own employment, and a great number, from the apprehension that the treaty of peace might revive their responsibility to the creditors, with the embarrassment to themselves of getting back, as well as they could, the moneys which they had paid into the treasury. Of this, our last

treaty of peace, in the opinion of able judges, gave an example.—These causes and others, which do not as readily occur, would oppose great obstacles to the execution of the measure.

But severe laws, inflicting heavy penalties, might compel it.—Experience does not warrant a sanguine reliance upon this expedient, in a case in which great opportunity of concealment is united with strong motives of inclination or interest.—It would require an inquisition, justly intolerable to a free people—penalties, which would confound the due proportion between crime and punishment, to detect or to deter from concealment and evasion, and to execute the law.—Probably no means less efficacious than a *revolutionary tribunal* and a *guillotine* would go near to answer the end.—There are but few, I trust, to whom these would be welcome means.

We may conclude, therefore, that the law would be evaded to an extent, which would disappoint the expectations from it, as a resource. Some moneys, no doubt, would be collected; but the probability is, that the amount would be insignificant, even in the scale of a single campaign.—But, should the collection prove as complete as it ordinarily is between debtor and creditor, it would little, if at all, exceed the expense of one campaign.

Hence we preceive, that, regarding the measure, either as a mean of disabling our enemies, or as a resource to ourselves, its consequence dwindles, upon a close survey; it cannot pretend to a magnitude, which would apologize, either for a sacrifice of national honor or candor, or for a deviation from the true principles of commerce and credit.

But let us take a further view of its disadvantages.

A nation, in case of war, is under no responsibility for the delinquencies or frauds of its citizens, who are debtors to those of its enemy, if it does not specially interfere with the payment of the debts which they owe. But, if it interposes its authority to prevent the payment, it gives a claim of indemnification to its adversary, for the intervening losses which those delinquencies or frauds may occasion.—Whether, on the making of peace, this would be insisted upon or waved, might depend much on

the good or ill success of the war; but every thing which adds to the catalogue of our enemy's just pretensions, especially when the fortune of war has been pretty equal, is an evil, either as an additional obstacle to speedy peace, or as an ingredient to render the terms of it less advantageous to ourselves. And it is, therefore, unwise in a government to increase the list of such pretensions, by a measure, which, without utility to itself, administers to the indolence of negligent, and to the avidity of fraudulent, individuals.

Further—Every species of reprisal or annoyance, which a power at war employs, contrary to liberality or justice, of doubtful propriety, in the estimation of the law of nations, departing from that moderation, which, in latter times, serves to mitigate the severities of war, by furnishing a pretext or provocation to the other side to resort to extremities, serves to embitter the spirit of hostilities, and to extend its ravages. War is then apt to become more sanguinary, more wasting, and every way more destructive. This is a ground of serious reflection to every nation, both as it regards humanity and policy; to this country it presents itself, accompanied with considerations of peculiar force. A vastly-extended sea-coast, overspread with defenceless towns, would offer an abundant prey to an incensed and malignant enemy, having the power to command the sea. The usages of modern war forbid hostilities of this kind; and though they are not always respected, yet, as they are never violated, unless by way of retaliation for a violation of them on the other side, without exciting the reprobation of the impartial part of mankind, sullying the glory, and blasting the reputation of the party which disregards them, this consideration has, in general, force sufficient to induce an observance of them. But the confiscation or sequestration of private debts, or private property in public funds, now generally regarded as an odious and unwarrantable measure, would, as between us and Great Britain, contain a poignant sting. Its effect to exasperate, in an extreme degree, both the nation and government of that country, cannot be doubted. A disposition to retaliate, is a natural consequence; and it would not be difficult for us to be made to suffer beyond any possible degree of advan-

tage to be derived from the occasion of the retaliation. It were much wiser to leave the property of British subjects, an untouched pledge for the moderation of its government, in the mode of prosecuting the war.

Besides (as, if requisite, might be proved from the records of history), in national controversies, it is of real importance to conciliate the good opinion of mankind; and it is even useful to preserve or gain that of our enemy. The latter facilitates accommodation and peace; the former attracts good offices, friendly interventions, sometimes direct support, from others.—The exemplary conduct, in general, of our country, in our contest for independence, was probably not a little serviceable to us in this way; it secured, to the intrinsic goodness of our cause, every collateral advantage, and gave it a popularity among nations, unalloyed and unimpaired, which even stole into the cabinets of princes. A contrary policy tends to contrary consequences. Though nations, in the main, are governed by what they suppose their interest, he must be imperfectly versed in human nature, who thinks it indifferent, whether the maxims of a state tend to excite kind or unkind dispositions in others, or who does not know, that these dispositions may insensibly mould or bias the views of self-interest.—This were to suppose that rulers only reason—do not feel; in other words, are not men.

Moreover, the measures of war ought ever to look forward to peace. The confiscation or sequestration of the private property of an enemy must always be a point of serious discussion, when interest or necessity leads to negotiations for peace. Unless when absolutely prostrate by the war, restitution is likely to constitute an ultimatum of the suffering party. It must be agreed to, or the war protracted, and at last, it is probable, it must still be agreed to. Should a refusal of restitution prolong the war for only one year, the chance is, that more will be lost than was gained by the confiscation. Should it be necessary finally to make it, after prolonging the war, the disadvantage will preponderate in a ratio to the prolongation. Should it be, in the first instance, assented to, what will have been gained? The temporary use of a fund of inconsiderable moment, in the general issue of the war, at the

expense of justice, character, credit, and, perhaps, of having sharpened the evils of war. How infinitely preferable to have drawn an equal fund from our own resources, which, with good management, is always practicable!—If the restitution includes damages, on account of the interference, for the failures of individuals, the loan will have been the most costly that could have been made. It has been elsewhere observed, that our treaty of peace with Great Britain gives an example of restitution. The late one between France and Prussia gives another. This must become every day more and more a matter of course, because the immunity of mercantile debts becomes every day more and more important to trade, better understood to be so, and more clearly considered as enjoined by the principles of the law of nations.

Thus we see, that in reference to the simple question of war and peace, the measure of confiscation or sequestration is marked with every feature of impolicy.

We have before seen, that the pretensions of a right to do the one or the other, has a most inimical aspect towards commerce and credit.

Let us resume this view of the subject. The credit, which our merchants have been able to obtain abroad, essentially in Great Britain, has, from the first settlement of our country to this day, been the animating principle of our foreign commerce. This every merchant knows and feels;—and every intelligent merchant is sensible, that, for many years to come, the case must continue the same. This, in our situation, is a peculiar reason, of the utmost force, for renouncing the pretension in question.

The exercise of it, or the serious apprehension of its exercise, would necessarily have one of two effects. It would deprive our merchants of the credit, so important to them, or it would oblige them to pay a premium for it, proportioned to the opinion of the risk. Or, to speak more truly, it would combine the two effects; it would cramp credit, and subject what was given to a high premium. The most obvious and familiar principles of human action establish, that the consideration for money or property, lent or credited, is moderate or otherwise, according to the opinion of security or hazard, and that the quantity of either to

be obtained, on loan or credit, is in a great degree contracted or enlarged by the same rule.

Thus should we, in the operations of our trade, pay exorbitantly for a pretension, which is of little value, or rather, which is pernicious, even in the relations to which its utility is referred. What folly to cherish it! How much greater the folly ever to think of exercising it! It never can be exercised hereafter, in our country, without great and lasting mischief.

Instead of cherishing so odious a pretension, as "our best, our only weapon of defence,"—wisdom admonishes us to be eager to cast it from us, as a weapon most dangerous to the wearer, proscribed by the laws of nations, by the laws of honor, and by every principle of sound policy.

Every merchant ought to desire that the most perfect tranquillity on this point, in foreign countries, should facilitate to him, on the best and cheapest terms, the credit for which he has occasion. And every other citizen ought to desire, that he may be thus freed from a continual contribution, in the enhanced price of every imported commodity he consumes, towards defraying the premium which the want of that tranquillity is calculated to generate.

CAMILLUS.

NO. XXII.

1795.

The analogy of the stipulation in the 10th article, with stipulations in our other treaties, and in the treaties between other nations, is the remaining topic of discussion. After this, attention will be paid to such observations, by way of objection to the article, as may not have been before expressly or virtually answered.

The 20th article of our treaty of amity and commerce with France, is in these words:

"For the better promoting of commerce, on both sides, it is

agreed, that if a war shall break out between the said two nations, six months, after the proclamation of war, shall be allowed to the merchants in the cities and towns where they live, for selling and transporting their goods and merchandises; and if any thing be taken from them, or any injury be done them within that term by either party, or the people or subjects of either, full satisfaction shall be made for the same."

The 18th article of our treaty of amity and commerce with the United Netherlands, is in these words:

"For the better promoting of commerce, on both sides, it is agreed, that if a war should break out between their high mightinesses, the States General of the United Netherlands, and the United States of America, there shall always be granted to the subjects on each side, the term of nine months, after the date of the rupture or the proclamation of war, to the end that they may retire with their effects and transport them where they please, which it shall be lawful for them to do, as well as to sell and transport their effects and goods, with all freedom and without any hindrance, and without being able to proceed, during the said term of nine months, to any arrest of their effects, much less of their persons; on the contrary, there shall be given them, for their vessels and effects which they would carry away, passports and safe conducts for the nearest ports of their respective countries, and for the time necessary for the voyage."

The 22d article of our treaty of amity and commerce with Sweden, is in these words:

"In order to favor commerce on both sides, as much as possible, it is agreed, that in case war should break out between the two nations, the term of nine months after the declaration of war shall be allowed to the merchants and subjects respectively, on one side and on the other, in order that they may withdraw with their effects and movables, which they shall be at liberty to carry off or to sell where they please, without the least obstacle —nor shall any seize their effects, and much less their persons, during the said nine months; but on the contrary, passports, which shall be valid for a time necessary for their return, shall be given them for their vessels and the effects which they shall

be willing to carry with them—and, if any thing is taken from them, or any injury is done to them by one of the parties, their people and subjects, during the term above prescribed, full and entire satisfaction shall be made to them on that account."

The 23d article of our treaty of amity and commerce with Prussia, contains this provision:

"If war should arise between the two contracting parties, the merchants of either country, then residing in the other, shall be allowed to remain nine months, to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance."

These articles of four, and the only commercial treaties we had with foreign powers, prior to the pending treaty with Great Britain, though differing in terms, agree in substance; except as to time, which varies from six to nine months. And they clearly amount to this, that upon the breaking out of a war between the contracting parties in each case, there shall be, for a term of six or nine months, full protection and security to the persons and property of the subjects of one, which are then in the territories of the other, with liberty to collect their debts,* to sell their goods and merchandises, and to remove, with their effects, wheresoever they please. For this term of six or nine months, there is a complete suspension of the pretended right to confiscate or sequester, giving, or being designed to give, an opportunity to withdraw the whole property which the subjects or citizens of one party have in the country of the other.

The differences between these stipulations and that in the article under examination are chiefly these: the latter is confined to debts, property in the public funds and in public and private banks, without any limitation of the duration of the protection. The former comprehends, in addition, goods and merchandises, with a limitation of the protection to a term of six or nine months; but with the intent and supposition that the term allowed may and will be adequate to entire security. The princi-

* The term "debts," is only expressed in the Prussian treaty, but there are in the other treaties, terms which include debts, and this is the manifest spirit and intent of all.

ple, therefore, of all the stipulations is the same; each aims at putting the persons and property of the subjects of one enemy, especially merchants, being within the country of the other enemy at the commencement of a war, out of the reach of confiscation or sequestration.

The persons whose names are to our other treaties, on the part of the United States, are Benjamin Franklin, Silas Deane, Arthur Lee, John Adams, and Thomas Jefferson. The three first are to the treaty with France—Mr. Adams is singly to that with the United Netherlands—Dr. Franklin singly to that with Sweden, and these two, with Mr. Jefferson, are jointly to that with Prussia. The treaty with Sweden was concluded in April, 1783; that with Prussia, in August, 1785. These dates repel the idea, that considerations of policy, relative to the war, might have operated in the case.

We have, consequently, the sanction of all these characters to the principle, which governed the stipulation entered into by Mr. Jay; and not only from the ratification of the former treaties at different periods, distant from each other, by different descriptions of men in our public councils, but also from there never having been heard, in the community, a lisp of murmur against the stipulation, through a period of seventeen years, counting from the date of the treaty with France, there is just ground to infer a coincidence of the public opinion of the country.

I verily believe, that if, in the year 1783, a treaty had been made with England, containing an article similar to the 10th in the present treaty, it would have met with general acquiescence. The spirit of party had not then predisposed men's minds to estimate the propriety of a measure according to the agent, rather than according to its real fitness and quality. What would then have been applauded as wise, liberal, equitable, and expedient, is now, in more instances than one, under the pestilential influence of that baneful spirit, condemned as improvident, impolitic, and dangerous.

Our treaty with Prussia, the 23d article of which has been cited, is indeed a model of liberality, which, for the principles it contains, does honor to the parties, and has been in this

country a subject of deserved and unqualified admiration. It contradicts, as if studiously, those principles of restriction and exclusion, which are the foundations of the mercantile and navigating system of Europe. It grants perfect freedom of conscience and worship to the respective subjects and citizens, with no other restraint than that they shall not insult the religion of others. Adopting the rule, that free ships shall make free goods, it extends the protection to the persons as well as to the goods of enemies. Enumerating, as contraband, only "arms, ammunition, and military stores," it even provides that contraband articles shall not be confiscated, but may be taken on the condition of paying for them. It provides against embargoes of vessels and effects. It expressly exempts women, children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabitating unfortified towns, villages, and places, and in general, all others whose occupations are for the common subsistence and benefit of mankind, their houses, fields, and goods, from molestation in their persons and employments, and from burning, wasting, and destruction, in time of war; and stipulates payment at a reasonable price for what may be necessarily taken from them for military use. It likewise protects from seizure and confiscation, in time of war, vessels employed in trade, and inhibits the granting commissions to private armed vessels, empowering them to take or destroy such trading vessels, or to interrupt their commerce; and it makes a variety of excellent provisions to secure to prisoners of war, a humane treatment.

These particulars are stated as evidence of the temper of the day, and of a policy, which then prevailed, to bottom our system with regard to foreign nations upon those grounds of moderation and equity, by which reason, religion and philosophy had tempered the harsh maxims of more early times. It is painful to observe an effort to make the public opinion, in this respect, retrograde, and to infect our councils with a spirit contrary to these salutary advances towards improvement in true civilization and humanity.

If we pass from our own treaties, to those between other

nations, we find that the provisions, which have been extracted from ours, have very nearly become formulas in the conventions of Europe. As examples of this may be consulted the following articles of treaties between Great Britain and other powers (to wit), the XVIIIth article of a treaty of peace and commerce with Portugal, in 1642—the XXXVIth article of a treaty of peace, commerce, and alliance with Spain, in 1667—the XIXth article of a treaty of peace, and the IId of a treaty of commerce with France, both in 1713, and the XIIth article of a treaty of commerce and navigation with Russia, in 1766.

The article with Portugal provides, that if difficulties and doubts shall arise between the two nations, which give reason to apprehend the interruption of commerce, public notice of it shall be given to the subjects on both sides, and after that notice, two years shall be allowed to carry away the merchandises and goods, and in the mean time, there shall be no injury or prejudice done to any person or goods on either side.

The articles with France, in addition to the provisions common in other cases, particularly stipulate, that during the term of the protection (six months) "the subjects on each side shall enjoy good and speedy justice, so that during the said space of six months, they may be able to recover their goods and effects, intrusted as well to the public, as to private persons."

The article with Russia besides stipulating an exemption from confiscation for one year, with the privilege to remove and carry away in safety, provides additionally, that the subjects of each party "shall be further permitted, either at or before their departure, to consign the effects which they shall not as yet have disposed of, as well as the debts that shall be due to them, to such persons as they shall think proper, in order to dispose of them according to their desire and for their benefit; which debts, the debtors shall be obliged to pay in the same manner as if no such rupture had happened."

All these articles are, with those of our treaties, analogous in principle, as heretofore particularly explained, to the 10th article of the treaty under discussion. That of the British treaty with France designates expressly debts due from the *public* as well as

those due from private persons. That with Russia goes the full length of our tenth article; empowering the creditors on each side to assign the debts, which they are not able to collect within the term of their residence, to whomsoever they think fit, for their own benefit, and declaring that these debts shall be paid to the assigns in the same manner as if no rupture had happened.

There is a document extant, which may fairly be supposed to express the sense of the government of France, at the period to which it relates, of the foundation ofthese stipulations. It is a memorial of Mr. Bussy, minister from the court of France to that of London, for negotiating peace, dated in the year 1761, and contains these passages: "As it is impracticable for two princes, who make war with *each other to agree between them which is the aggressor with regard to the other*,* equity and humanity have dictated these precautions, that where an unforeseen rupture happens suddenly and without any previous declaration, foreign vessels, which, navigating *under the security of peace* and of treaties, happen, at the time of rupture, to be in either of the respective ports, shall have time and full liberty to withdraw themselves.

"This wise provision, so agreeable to the rules of good faith, *constitutes a part of the law of nations*, and the article of the treaty which sanctifies these precautions ought to be faithfully executed, notwithstanding the breach of the other articles of the treaty which is the natural consequence of the war.

"The courts of France and Great Britain used this salutary precaution in the treaties of Utrecht and Aix-la-Chapelle."

These passages place the security stipulated in the treaties for the persons and property of the subjects of one party found in the country of another, at the beginning of a war, upon the footing of *its constituting a part of the law of nations*, which may be considered as a formal diplomatic recognition of the principle

* Thus we find it the sentiment of this minister, that it is *impossible* for two princes who make war with each other, to agree *which is the aggressor with regard to the other*. And yet Mr. Jay was to extort from Great Britain an acknowledgment, that *she was the aggressor with regard to us*, and was guilty of pusillanimity in waving the question.

for which we contend. As this position was not itself in dispute between the two governments, but merely a collateral inference from it, applicable to vessels *taken at sea*, prior to a declaration of war, it may be regarded as a respectable testimony of the law of nations on the principal point.

If the law of nations confers this exemption from seizure upon vessels, which, at the time of the rupture, happen to be in the respective ports of the belligerent parties, it is evident that it must equally extend its protection to debts contracted in a course of lawful trade. Vessels are particularly mentioned, because the discussion turned upon vessels seized at sea. But the reference to the treaties of Utrecht and Aix-la-Chapelle shows, that the minister, in his observation, had in view the whole subject matter of the articles of those treaties, which provide for the security of merchants and their effects in the event of war.

This conformity in principle, of the article under examination, with the provisions in so many treaties of our own and of other nations, taken in connection with the comment of Mr. Bussy, brings a very powerful support to the article. It is additional and full evidence that our envoy, in agreeing to it, did not go upon new and untrodden ground; that, on the contrary, he was in a beaten track; that, in pursuing the dictates of reason, and the *better opinion* of writers, as to the rule of the law of nations respecting the point, he was, at the same time, pursuing the examples of all the other treaties which we had ourselves made, and of many of those of other countries.

It is now incumbent upon me to perform my promise of replying to such objections to the article as may remain unanswered by the preceding remarks. It is with pleasure I note that the field is very narrow—that, indeed, there scarcely remains any thing which is not so frivolous and impotent as almost to forbid a serious replication. It will therefore be my aim to be brief.

It is said, there is only an apparent reciprocity in the article, millions being due on our side, and little or nothing on the other.

The answer to this is, that no right being relinquished on

either side, no privilege granted, the stipulation amounting only to a recognition of a rule of the law of nations, to a promise to abstain from injustice and a breach of faith, there is no room for an argument about reciprocity further than to require that the promise should be mutual, as is the case. This is the only equivalent which the nature of the subject demands or permits. It would be dishonorable to accept a boon merely for an engagement to fulfil a moral obligation. Indeed, as heretofore intimated, the true rule of reciprocity in stipulations of treaties, is equal right, not equal advantage from each several stipulation.

But it has been shown, that the stipulation will be beneficial to us, by the confidence which it will give on the other side, obviating and avoiding the obstructions to trade, the injuries to, and incumbrances upon, credit, naturally incident to the distrust and apprehension, which, after the question had been once moved, were to be expected. Here, if a compensation were required, there is one. Let me add as a truth, which, perhaps, has no exception, however uncongenial with the fashionable patriotic creed—that, in the wise order of Providence, nations, in a temporal sense, may safely trust the maxim, that the observance of justice carries with it its own and a full reward.

It is also said, that having bound ourselves by treaty, we shall hereafter lose the credit of moderation, which would attend a forbearance to exercise the right. But it having been demonstrated that no such right exists, we only renounce a claim to the negative merit of not committing injustice, and we acquire the positive praise of exhibiting a willingness to renounce explicitly a pretension, which might be the instrument of oppression and fraud.—It is always honorable to give proof of upright intention.

It is further said, that under the protection of this stipulation the king of Great Britain, who has already *speculated in our funds* (the assertors would be puzzled to bring proof of the fact), may engross the whole capital of the bank of the United States, and thereby secure the uncontrolled direction of it—that he may hold the stock in the name of his ambassador, or of some citizen of the

United States, perhaps a senator, who, if of the virtuous twenty,* might be proud of the honor—that thus our citizens, in time of peace, might experience the mortification of being beholden to British directors for the accommodations they might want—that, in time of war, our operations might be cramped at the pleasure of his majesty, and according as he should see fit or not to accommodate our government with loans—and that both in peace and war we may be reduced to the abject condition of having the whole capital of our national bank administered by his Britannic majesty.

Shall I treat this rhapsody with seriousness or ridicule?

The capital of the bank of the United States is ten millions of dollars, little short, at the present market price, of three millions of pounds sterling: but, from the natural operation of such a demand, in raising the price, it is not probable that much less than four millions sterling would suffice to complete the monopoly. I have never understood, that the private purse of his Britannic majesty, if it be true, as asserted, that he has already witnessed a relish for speculation in our funds (a fact, however, from which it was natural to infer a more pacific disposition towards us), was so very ample as conveniently to spare an item of such size for a speculation across the Atlantic. But, perhaps, the national purse will be brought to his aid. As this supposes a parliamentary grant, new taxes and new loans, it does not seem to be a very manageable thing, without disclosure of the object; and, if disclosed, so very unexampled an attempt of a foreign government would present a case completely out of the reach of all ordinary rules, justifying, by the manifest danger to us, even war and the confiscation of all that had been purchased. For let it be remembered, that the article does not protect the public property of a foreign government, prince, or state, independent of the observation just made, that such a case would be without the reach of ordinary rules. It may be added, that an attempt of this kind, from the force of the pecuniary capital of Great Britain, would, as a precedent, threaten and alarm all nations. Would consequences like these be incurred?

* Those who advised to a ratification of the treaty.

But let it be supposed, that the inclination shall exist, and that all difficulties about funds have been surmounted—still, to effect the plan, there must be, in all the stockholders, a willingness to sell to the British king or his agents, as well as the will and means, on his part, to purchase. Here, too, some impediments might be experienced: there are persons who might choose to keep their property in the shape of bank stock, and live upon the income of it, whom price would not readily tempt to part with it. Besides, there is an additional obstacle to complete success:—The United States are themselves the proprietors of two millions of the bank stock.

Of two things, one, either the monopoly of his Britannic majesty would be known (and it would be a pretty arduous task to keep it a secret, especially if the stock was to stand, as suggested, in the name of his ambassador), or it would be unknown and concealed under unsuspected names: In the former supposition, the observations already made recur. There would be no protection to it from the article; and the extraordinary nature of the case would warrant any thing. Would his majesty or the parliament choose to trust so large a property in so perilous a situation?

If, to avoid this, the plan should be to keep the operation unknown, the most effectual method would be to place the stock in the names of our own citizens. This, it seems, would be attended with no difficulty, since even our senators would be ambitious of the honor: and if they should have qualms and fears, others more compliant could, no doubt, be found amongst the numerous sectaries or adherents of Great Britain in our country: probably some of the patriots would not be inexorable, if properly solicited. Or, in the last resort, persons might be sent from Great Britain to acquire naturalization for the express purpose.

In this supposition, too, the article would be at the least innocent. For its provisions are entirely foreign to the case of stock standing in the names of our own citizens. It neither enlarges nor abridges the power of the government in this respect.

Further, how will the article work the miracle of placing the

bank under the management of British directors? It gives no new rights, no new qualifications.

The constitution of the bank (section the 5th, 7th of the act of incorporation) has provided, with solicitude, these important guards against foreign or other sinister influence. 1. That none but a citizen of the United States shall be eligible as a director. 2. That none but a stockholder, actually resident within the United States, shall vote in the elections by proxy. 3. That one fourth of the directors, who are to be elected annually, must every year go out of the direction. 4. That a director may, at any time, be removed and replaced by the stockholders at a general meeting. 5. That a single share shall give one vote for directors, while any number of shares, in the same person, copartnership or body politic, will not give more than thirty votes.

Hence it is impossible, that the bank can be in the management of British directors—a British subject being incapable of being a director. It is also next to impossible, that an undue British influence could operate in the choice of directors, out of the number of our own citizens. The British king, or British subjects out of the United Sates, could not even have a vote by attorney, in the choice. Schemes of secret monopoly could not be executed, because they would be betrayed, unless the secret was confined to a small number. A small number, no one of whom could have more than thirty votes, would be easily overruled by the more numerous proprietors of single or a small number of shares, with the addition of the votes of the United States.

But here again it is to be remembered, that as to combination with our own citizens, in which they were to be ostensible for any pernicious foreign project, the article under consideration is perfectly nugatory. It can do neither good nor harm, since it merely relates, as to the exemption from confiscation and seizure on our part, to the known property of British subjects.

It follows, therefore, that the dangers portrayed to us from the speculating enterprises of his Britannic majesty, are the

vagaries of an over-heated imagination, or the contrivances of a spirit of deception; and that so far as they could be supposed to have the least color, it turns upon circumstances upon which the treaty can have no influence whatever. In taking pains to expose their futility, I have been principally led by the desire of making my fellow-citizens sensible, in this instance, as in others, of the extravagancies of the opposers of the treaty.

One artifice to render the article unacceptable has been to put cases of extreme misconduct, on the other side, of flagrant violations of the law of nations, of war, of justice, and of humanity; and to ask, whether, under such circumstances, the confiscation or sequestration of debts would not be justifiable? To this the answer is, that if circumstances so extraordinary should arise, as, without the treaty, would warrant so extraordinary an act, they will equally warrant it under the treaty. For cases of this kind are exceptions to all general rules. They would excuse the violation of an express or positive, as well as of a tacit or virtual, pledge of the public faith: which describes the whole difference between the existence and non-existence of the article in question. They resemble those cases of extreme necessity (through excessive hunger, for instance) which, in the eye of the law of nature, will excuse the taking of the property of another, or those cases of extreme abuse of authority of rulers, which, amounting unequivocally to tyranny, are admitted to justify forcible resistance to the established authorities. Constitutions of government, laws, treaties, all give way to extremities of such a description: the point of obligation is, to distinguish them with sincerity, and not to indulge our passions and interests, in substituting pretended for real cases.

A writer, who disgraces by adopting the name of CICERO, makes a curious remark by way of objection. He affirms that the article is nugatory, because a treaty is dissolved by a state of war, in which state the provision is designed to operate. If this be true, the article is at least harmless, and the trouble of painting it in such terrific colors might have been spared. But it is not true. Reason, writers, the practice of all nations, accord in this position, that those stipulations which contemplate the state

of war, in other words, which are designed to operate in case of war, preserve their force and obligation when war takes place.* To what end else all the stipulations which have been cited from so many treaties?†

Previous to a conclusion I shall observe, barely with a view to accuracy, that the article leaves unprotected all vessels, goods, and merchandises—every species of property, indeed, except debts between individuals and the property of individuals in the public funds and in public and private banks. With this exception, whatever before may have been liable to confiscation or sequestration, still remains so, notwithstanding any thing contained in this article.

To overrate the value and force of our own arguments is a natural foible of self-love—to be convinced without convincing others, is no uncommon fate of a writer or speaker; but I am more than ordinarily mistaken if every mind open to conviction, will not have been satisfied by what has been offered—that the tenth article of the treaty lately negotiated with Great Britain, does nothing but confirm, by a positive agreement, a rule of the law of nations—indicated by reason, supported by the better opinion of writers, ratified by modern usage, dictated by justice and good faith, recognized by formal acts and declarations of different nations, witnessed by diplomatic testimony, sanctioned by our treaties with other countries, and by treaties between other countries, and conformable with sound policy and the true interests of the United States.

The discussion has been drawn out to so great a length, because the objections to this article are amongst those which have been urged with the greatest warmth and emphasis against the

* Vattel, B. iii., ch. x.

† This writer is as profligate as he is absurd. Besides imputing to *Camillus*, in general terms, a number of things of which he never dreamt, he has the effrontery to forge, as a *literal quotation* from him (calling it his *own language* and designating it by *inverted commas*), a passage respecting the impressing of seamen, which certainly not in terms, nor even in substance, upon fair construction, is to be found in any thing he has written. Not having all the numbers of *Cicero* at hand, I may mistake, in attributing to him the principal sentiment, which is from memory, but I have under my eye the number which witnesses his forgery.

treaty, and its vindication from them, if satisfactory, must go far towards securing to it the public suffrage. Citizens of Amer ca it is for you to perform your part of the task, it is for you to weigh with candor the arguments which have been submitted to your judgments; to consult, without bias, the integrity of your hearts; to exile prejudice, and to immolate on the altar of truth the artifices of cabal and falsehood! There can then be no danger that patriotism will have to lament, or national honor to blush at the sentence which you shall pronounce.

The articles which adjust the matters of controversy between the two countries, all those which are permanent, have now been reviewed. Let me appeal to the consciences of those who have accompanied me in the review; if these articles were all that composed the treaty, would it be the better that they should exist—or that all the sources of rupture and war with Great Britain should have survived the negociation to extinguish them, and should still actually subsist in full vigor? If every enlightened and honest man must prefer the former—then let me make another observation, and put another question. The remaining articles of the treaty, which constitute its commercial part, expire by their own limitation at the end of twelve years. It is in the power of either party, consistently with the instrument, to terminate them at the end of the expiration of *two* years after the present war between France and Great Britain.

Is it at all probable that they can contain any thing so injurious, considering the short duration which may be given to them, as to counterbalance the important consideration of preserving peace to this young country; as to warrant the excessive clamors which have been raised; as to authorize the horrid calumnies which are vented; and to justify the systematic efforts which are in operation to convulse our country and to hazard even CIVIL WAR?*

CAMILLUS.

* In applying the character of dishonesty and turpitude to the principle of confiscation or sequestration. I am far from intending to brand as dishonest men all those whose opinions favor it. I know there are some ardent spirits chargeable with the error, of whose integrity I think well.

NO. XXIII.*

1795.

The preceding articles having adjusted those controversies which threatened an open rupture between the two countries, it remained to form such dispositions relative to the intercourse, commerce, and navigation, of the parties, as should appear most likely to preserve peace, and promote their mutual advantage.

Those who have considered with attention the interests of commerce, will agree in the opinion, that its utility, as well as general prosperity, would be most effectually advanced by a total abolition of the restraints and regulations with which the jealousies and rival policy of nations have embarrassed it. But though we are not chargeable with having contributed to the establishment of these errors, so discouraging to the industry and perplexing in the intercourse of nations, we found them so deeply rooted and so extensively prevalent, that our voice and opinions would have been little regarded, had we expressed a desire of a system more liberal and advantageous to all.

The rights of commerce among nations between whom exist no treaties, are imperfect.

"The law of nature," says Vattel, (b. i. s. 89) "gives to no person whatever the least kind of right to sell what belongs to him to another who does not want to buy it; nor has any nation that of selling its commodities or merchandise to a people who are unwilling to have them. Every man and every nation being perfectly at liberty to buy a thing that is to be sold, or not to buy it, and to buy it of one rather than of another."—"Every state has constantly," continues the same author, "a right to prohibit the entrance of foreign merchandise, and the people who are interested in this prohibition have no right to complain of it."——States by convention may turn these imperfect into perfect rights, and thus a nation, not having naturally a perfect right to carry on commerce with another, may acquire it by

* This and the seven succeeding numbers are from the pen of Rufus King, excepting the parts within brackets, which are in Hamilton's hand.—Ed.

treaty. A simple permission to trade with a nation, gives no perfect right to that trade; it may be carried on so long as permitted; but the nation granting such permission is under no obligation to continue it. A perfect right in one nation to carry on commerce and trade with another nation can alone be procured by treaty.

From the precarious nature of trade between nations, as well as from the desire of obtaining special advantages and preferences in carrying it on, originated the earliest conventions on the subject of commerce. The first commercial treaty that placed the parties on a more secure and better footing in their dealings with each other than existed in their respective intercourse with other nations, inspired others with a desire to establish, by similar treaties, an equally advantageous arrangement. Thus one treaty was followed by another, until, as was the case when the United States became an independent power, all nations had entered into extensive and complicated stipulations, concerning their navigation, manufactures and commerce.

This being the actual condition of the commercial world, when we arrived at our station in it, the like inducements to render certain that, which by the law of nations, was precarious, and to participate in the advantages secured by national agreements, prompted our government to propose to all, and to conclude with several, of the European nations, treaties of commerce.

Immediately after the conclusion of the war, Congress appointed Mr. Adams, Doctor Franklin, and Mr. Jefferson, joint commissioners, to propose and conclude commercial treaties with the different nations of Europe. This commission was opened at Paris, and overtures were made to the different powers (including Great Britain) through their ministers residing at Paris. The basis of these numerous treaties, which Congress were desirous to form, was, that the parties should respectively enjoy the rights of the most favored nations. Various answers were given by the foreign ministers, in behalf of their several nations. But the treaty with Prussia was the only one concluded, of the very great number proposed by the American commissioners.

Mr. Adams, in 1785, was removed to London, Dr. Franklin soon after returned to America, and Mr. Jefferson succeeded him as minister at Paris. Thus failed the project of forming commercial treaties with almost every power in Europe. Treaties with Russia, Denmark, Great Britain, Spain and Portugal, would have been of importance; but the scheme of extending treaties of commerce to all the minor powers of Europe, not omitting his holiness the pope, was, it must be acknowledged, somewhat chimerical, and could not fail to have cast an air of ridicule on the commissions that with great solemnity were opened at Paris.

The imbecility of our national government, under the articles of confederation, was understood abroad as well as at home; and the opinions of characters in England, most inclined to favor an extensive commercial connection between the two countries, were understood to have been opposed to the formation of a commercial treaty with us; since, from the defects of our articles of union, we were supposed to be destitute of the power requisite to enforce the execution of the stipulations that such a treaty might contain.

We must all remember the various and ill-digested laws for the regulation of commerce, which were adopted by the several states as substitutes for those commercial treaties, in the conclusion of which our commissioners had been disappointed—the embarrassments which proceeded from this source, joined to those felt from the derangement of the national treasury, were the immediate cause which assembled the convention at Philadelphia in 1787. The result of this convention was the adoption of the present Federal Constitution, the legislative and executive departments of which each possess a power to regulate foreign commerce; the former, by enacting laws for that purpose—the latter, by forming commercial treaties with foreign nations.

The opinion heretofore entertained by our government, respecting the utility of commercial treaties, is not equivocal; and it is probable that they will, in future, deem it expedient to adjust their foreign trade by treaty, in preference to legislative provisions, as far as it shall be found practicable, on terms of rea-

sonable advantage. In the formation of the regulations that are legislative, being *ex parte*, the interest of those who establish them is seen in its strongest light, while that of the other side is rarely allowed its just weight. Pride and passion too frequently add their influence to carry these regulations beyond the limits of moderation: restraints and exclusions on one side, beget restraints and exclusions on the other; and these retaliatory laws lead to, and often terminate in, open war: While, on the other hand, by adjusting the commercial intercourse of nations by treaty, the pretensions of the parties are candidly examined, and the result of the discussion, it is fair to presume, as well from the experience of individuals in private affairs, as from that of nations in their more important and complicated relations, establishes those regulations which are best suited to the interests of the parties, and which alone afford that stability and confidence so essential to the success of commercial enterprise.

That our present government have thought a commercial treaty with Great Britain would be advantageous, is evident, not alone from the special and distinct commission given to Mr. Jay to form one; but likewise from the letter of Mr. Jefferson to Mr. Hammond, of the 29th of November, 1791, which was the first letter to that minister after his arrival; in which the Executive says: "with respect to the commerce of the two countries, we have supposed that we saw, in several instances, regulations on the part of your government, which, if reciprocally adopted, would materially injure the interests of *both nations;* on this subject, too, I must beg the favor of you to say, whether you are authorized to conclude or to negotiate arrangements with us, which may fix the commerce between the two countries on principles of reciprocal advantage."

Further, from the first session of Congress, to that during which Mr. Jay's appointment took place, efforts were made to discriminate, in our revenue and commercial laws, between those nations with whom we had, and those with whom we had not, commercial treaties—the avowed object of which discrimination was, to place the latter nations on a less advantageous commercial footing than the former, in order to induce them likewise to

form commercial treaties with us; and it cannot be forgotten by those who affect to suppose that it was not expected that a treaty of commerce would be formed by Mr. Jay, that *Mr. Madison's* commercial resolutions, which were under consideration at the time of Mr. Jay's appointment, grew out of, and were built upon, a clause of Mr. Jefferson's report of the 26th December, 1793, which asserts that Great Britain discovered no disposition to enter into a commercial treaty with us. The report alluded to is explicit in declaring a preference of friendly arrangements, by treaties of commerce, to regulations by the acts of our legislature, and authorizes the inference, under which the commercial resolutions were brought forward, that the latter should be resorted to, only when the former cannot be effected.

The power of the executive to form commercial treaties, and the objection against the commercial articles before us, as an unconstitutional interference with the legislative powers of Congress, will, in the sequel, be distinctly examined, together with other objections on the point of constitutionality.

Against the policy of regulating commerce by treaty, rather than by acts of the legislature, it is said, that the legislative acts can, but that a treaty cannot, be repealed. This remark is true, and of weight against the formation of commercial treaties which are to be of long duration, or like our commercial treaty with France, which is permanent. For, as we are yearly advancing in agriculture, manufactories, commerce, navigation, and strength, our treaties of commerce, especially such as, by particular stipulations, shall give to the parties other rights than those of the most favored nation, ought to be of short duration, that, like temporary laws, they may, at an early day, expire by their own limitation, leaving the interests of the parties to a new adjustment, founded on equity and mutual convenience.

Of this description are the commercial articles of the treaty with Great Britain; for none of them can continue in force more than twelve years; and they may all expire, if either party shall choose it, at the end of two years after the peace between France and Great Britain.

Did the limits assigned to this defence admit a review of the

commercial and maritime codes of the principal European nations, we should discover one prevailing feature to characterize them all; we should see the general or common interest of nations, every where, placed in a subordinate rank, and their separate advantage adopted, as the end to be attained by their respective laws—hence, one nation has enacted laws to protect their manufactures, another to encourage and extend their navigation, a third to monopolize some important branch of trade, and all have contributed to the creation of that complicated system of regulations and restraints, which we see established throughout the commercial world.

One branch, and a principal one of this system, that which establishes the connection between the several European nations and their colonies, merits our particular attention. An exact knowledge of this connection would assist us in forming a just estimate of the difficulties that stand in opposition to our claim of free and full participation in the colony trade of Great Britain.

Unlike the plan of colonization adopted by the ancient governments, who, from the crowded population of their cities, sent forth and established beneath their auspices new and independent republics, the colonies of modern times have been planted with entirely different views; retained in a state of dependence on the parent country, their connection has been made subservient to that spirit of monopoly which has shown itself among all the commercial powers. Every European nation has its colonies, and for that reason prohibited all foreigners from trading to them.

Important political events arise and pass in such quick succession, that we are liable to forget facts and opinions familiar to us in periods within the ordinary powers of recollection. No subject was more critically examined, or generally understood before the American revolution, than that which respected the connection between Great Britain and her colonies; all were then agreed, that the colony trade and navigation were subject to the restraints and regulations of the parent state. It was not against this dependence and commercial monopoly that the colo-

nies complained! They were willing to submit to them. It was the unjust attempt to tax them, to raise a revenue from them, without their consent, which combined that firm and spirited opposition which effected a division of the empire—thus the Congress of 1775, in their last address to the inhabitants of Great Britain, say, "We cheerfully consent to such acts of the British parliament as shall be restrained to the regulations of our external commerce, *for the purpose of securing the commercial advantages of the whole empire to the mother country*, and the commercial benefit of its respective members; excluding every idea of taxation internal or external for the purpose of raising a revenue on the subjects in America without their consent." The "colonial codes of other nations are marked with the same spirit of monopoly—thus Portugal shuts out all foreigners from the Brazils as well as from her Asiatic possessions, Spain from South America and her West India islands, France excludes all foreigners from her Asiatic dominions, and limits within narrow bounds their intercourse with her colonies in the West Indies. Holland guards, with the miser's vigilance, the access to her spice islands, and imitates, though with somewhat less rigor, the policy of the other powers in her West India possessions. And England, by her act of navigation, which has been in operation for more than a century, asserted, and hitherto has uniformly adhered to, the like system of exclusion and monopoly.

Notwithstanding the intimate alliance, the family compact, between France and Spain, the former has not been able to procure admission into the Spanish colonial territories, where she might have acquired immense wealth by the sale of her manufactures, her wines, and her brandies. Holland, though a part of the Spanish monarchy long after the discovery of America, and the establishment of the Spanish power in that quarter of the world, was unable after her separation from Spain, and the acknowledgment of her independence, even in the zenith of her splendid power upon the ocean, to obtain by force or treaty a share in the Spanish colony trade to South America. The rival wars between the English and the Dutch towards the close of the last century, which originated in commercial competition and

jealousy, were successively terminated without England yielding the smallest departure from the exclusive commercial system, contained in her act of navigation.

Great Britain, though maintaining her exclusive laws against other nations at different periods, has shown the strongest desire to share in the rich trade of Spain with her colonies. The war that commenced in 1739, was occasioned by the firm, but irregular, opposition of Spain to the contraband efforts of British traders.

The impediments Great Britain has uniformly met in her attempts to extend her settlement in the Bay of Honduras, to form establishments at Falkland's Island, and more recently at Nootka Sound, afford additional proofs of the fixed policy of Spain on the subject of her colony trade.

Portugal, whose political safety more than once has appeared to depend upon the efficacious aid of Great Britain, does not yield to her ally any portion of her valuable colonial commerce.

So uniform and persevering has been the practice of nations on this point, that in the latest treaties of commerce between France and Spain, between each of these powers and Great Britain, between Great Britain, Sweden, Denmark, Holland, and Portugal, we do not discover that any one of these powers has consented to admit the others to a participation in the trade and navigation to their respective colonies—the Assiento contract for the supply of negroes to the Spanish colonies, which has been made by Spain with several powers, is an unimportant and solitary exception to this rule.

Montesquieu calls this law appropriating the colony commerce to the benefit of the parent state, "A fundamental law of Europe." "It has been established," says this enlightened Frenchman,—"that the metropolis or mother country alone shall trade in the colonies, and that for very good reasons; because the design of the settlement, was the extension of commerce, not the foundation of a city or new empire. Thus it is still a fundamental law of Europe, that all commerce with a foreign colony shall be regarded as a mere monopoly, punishable by the laws of the country; and in this case we are not to be directed by the laws and precedents of the ancients, which are not at all applicable."

"It is likewise acknowledged that a commerce established between the mother countries, does not include a permission to trade in the colonies; for these always continue in a state of prohibition." [Montesquieu, Liv. xxi. chap. xvii.]

This subject is of too great importance not to be pursued a little further. Principles connected with it, and such as will continue to operate whether we sanction or condemn them, remain to be disclosed. It is true that the principal end of the dominion that the European powers have held over their colonies. has been the monopoly of their commerce, "since in their exclusive trade (as has been observed by a sensible writer on the subject) consists the principal advantages of colonies, which afford neither revenue nor force for the defence of the parent country;" but this is not the sole object. Some nations, and among them Great Britain, have viewed the exclusive navigation and trade to their colonies, in the light in which they have seen their coasting trade and fisheries; as a nursery for that body of seamen, whom they have considered not only as necessary to the prosperity and protection of commerce, but as essential to the defence and safety of the state.

The situation of Great Britain in this respect is peculiar: when compared with several of the neighboring powers, her numbers and military forces are manifestly inferior. The armies kept on foot in peace, as well as those brought into the field in war, by the great nations in Europe, are so decidedly superior to those of Great Britain, that were she a continental power, her rivals would easily be an overmatch for her. The ocean is her fortification, and her seamen alone are the soldiers who can defend it. When Great Britain shall become an inferior maritime power, when her enemy shall acquire a decisive superiority on the sea, what will prevent a repetition of those conquests the examples of which we find in her early history? No subject has been more profoundly thought on than this has been in Great Britain. Her policy, from the date of her navigation act, has been guided by these considerations—that her national safety depends on her wooden walls, is a maxim as sacred in Britain, as it once was in Athens. Her statesmen, her merchants, her manufacturers, and her yeomanry, comprehend and believe it.

Is it then surprising, that we see her so anxious to encourage and extend her navigation, as to exclude as far as practicable, foreigners from any share of her fisheries, her coasting, and her colony trade? Does not candor require us to admit, since her national defence rests upon her navy, which again depends on her seamen, which an extensive navigation can alone supply, that Great Britain having more to risk, is among the last powers likely to break in upon or materially to relinquish that system of exclusive colony trade, that has so long and uniformly prevailed among the great colonizing powers?

America has her opinions, perhaps prejudices, on the subject of commerce: she is, and, at least until she shall become a naval power, will continue to be, without colonies. But her laws manifest a similar spirit with those of other nations, in the regulations which they prescribe for the government of her fisheries and her coasting trade. The object of these laws is an exclusion of foreign competition, in order to encourage and increase her own navigation and seamen; from which resources, not only in wars between other nations, but likewise in those in which she may be engaged, important commercial and national advantages may be expected. These opinions deserve attention; they have already had and will continue to have a suitable influence with her government. But we should remember, that other nations have likewise their opinions and prejudices on these subjects; opinions and prejudices not the less strong or deeply rooted for having been transmitted to them through a series of past generations. Thus in England, not only the public opinion, but what is more unconquerable, the *private interests* of many individuals will oppose every change in the existing laws that may be supposed likely to diminish their navigation, to limit their trade, or in any measure to affect disadvantageously their established system of national commerce.

It cannot have escaped notice, that we have among us characters who are unwilling to see stated the impediments that stand in the way of the commercial arrangements, which they contend, should be conceded to us by foreign nations, and who are ready to charge those who faithfully expose them, with an

inclination to excuse or vindicate the unreasonable denials of our commercial rivals, and with a desire to yield up the just pretensions of our country. The artifice seems too gross to be dangerous with a sensible people, but the public should notwithstanding be on their guard against it.—They should dispassionately examine the real difficulties to be encountered in the formation of our commercial treaties. They should inquire and ascertain how far other nations, seeking the same advantages, have been able to succeed. They should further compare the treaty in question with those we have before made with other nations—the result of such investigation so far from warranting the condemnation of the commercial articles of the treaty before us, it is believed would demonstrate that these articles make a wider breach in the British commercial system than has ever before been made; that on their commercial dispositions they are preferable to any treaty we have before concluded, and that there is rational ground to believe that the treaty will have a tendency friendly to the agriculture, the commerce, and the navigation of our country.

CAMILLUS.

NO. XXIV.

1795.

However uniform may have been the law of Europe in relation to the colonial establishments, no pains have been spared to create an opinion that France has been guided by a more liberal policy than the other colonizing powers, and that the regulations of her colony trade were essentially dissimilar from theirs; moreover that her disinterestedness was so great, that she not long since proposed to our government to establish by treaty, a trade between us and her West India colonies equally free with that which prevails in her own intercourse with them. The object of these attempts is readily perceived.

As there was no probability, that Great Britain would consent to our trading with her West India colonies on the same terms

as she herself does, as it was foreseen that limitations and conditions would accompany any agreement that should be made on this subject; to extol the liberty of France, and exclaim against the monopolizing views of Great Britain, were deemed suitable means to excite a prejudice against the expected adjustment of the commercial intercourse between us and the British West India colonies.

A comparison of the footing by which our trade stood with the French and British West India colonies, after the completion of our revolution, and before the present war in Europe, with a concise exposition of the real views of France on the subject of a new commercial treaty, will best demonstrate the want of candor and patriotism in those Americans, who have submitted to become agents in propagating these errors.

France, like England, has endeavored to secure the greatest possible portion of advantage to herself, by her colonial laws, and the concessions yielded to foreigners have been only such deviations from an entire monopoly, as her own interest has rendered indispensable.—France, in imitation of the English navigation law, as early as 1727, established an ordinance, confirming to the mother country the monopoly of the trade to her colonies, and excluding thereby all foreigners.—Experience proved the necessity of moderating the rigor of their ordinance, and relaxations in favor of a limited foreign intercourse existed at the time when our commercial treaty with France was concluded, by the thirtieth article of which, it is agreed, that France will continue to the citizens of the United States, the free ports, which have been and are open in her West India islands, to be enjoyed agreeable to the regulations which relate to them.—A system of regulations relative to the trade of foreigners with the French islands, was promulgated in 1784. This ordinance established one free port at St. Lucie, another at Martinique, another at Gaudaloupe, another at Tobago, and three others at St. Domingo, to which foreign vessels of the burthen of sixty tons and upwards might carry for sale, woods of all sorts, pit coal, live animals, fatted beef, salted fish, rice, Indian corn, vegetables, green hides, peltry, turpentine, and tar.—This was followed by the arrests of September, 1785, which

by imposing heavy duties on foreign salted fish, and establishing large bounties on those of the national or French fishery, materially affected the foreign commerce with the French islands in this important article of supply and consumption.

Such were the duties on the foreign, and the premiums on the national fish, that together they would have been equivalent to a prohibition of the former, had the national fishery been able to supply the consumption.

In return for these articles, which alone were permitted to be imported by foreigners into the French islands, and which it will be observed excluded some of our principal staples, especially *flour*, they were allowed to purchase and bring away of the productions of the islands, only molasses and rum.

All cotton, coffee, sugar, and other productions (rum and molasses excepted) were prohibited; and we could, except occasionally by local relaxations of the general law, rightfully obtain none of them from the French West India islands. This was the footing of our trade under our treaty and the standing edict which preceded the French revolution, and even this was liable to still further limitations, whenever France should think proper to impose them; the treaty securing only a right to as free a commerce as France should grant to other foreign nations.

Great Britain has permitted the importation into her West India colonies of all the foreign articles, allowed by France to be imported into her islands (salted fish and salted beef excepted), and she moreover permitted the importation of foreign tobacco, flour, meal, biscuit, wheat, and various other grains which France prohibited. In return for these commodities, Great Britain permitted the exportation from her islands to our country, of rum and molasses, and moreover of sugar, coffee, cocoa, ginger, and pimento, together with such other articles as are allowed to be carried from their islands to any other foreign country.

Great Britain prohibited the importation and exportation of most of these articles to and from all foreign nations, except the United States—France permitted the intercourse with her colonies, under the same limitations to us in common with all other foreign nations.

The articles received from us by Great Britain, for the supply of her West India islands, exceeded in variety those received from us by France for the supply of her islands; the British West Indies were, therefore, in the ordinary and established course, more extensive customers to us than the French West Indies. Again, the articles which we received from the British West Indies, and which we were prohibited from receiving from the French West Indies, were among the most valuable of their productions, and, from the force of habit, some of them are included in the catalogue of articles of the first necessity in our consumption. In point of supply, therefore, the British were better furnishers, their colonial laws being much less restrictive than those of France.

Though the regulations of the British West India trade were more favorable to our agriculture than those of France, and though the articles with which we were supplied from the British islands were more numerous and valuable than those obtained from the islands of France, the colony system of the latter was preferable to that of the former in relation to our navigation. France permitted our vessels of and above sixty tons burthen, to carry and bring away the articles, not prohibited in the foreign trade with her islands, while Great Britain confined the trade to her own vessels and excluded those of all foreign nations.

Difference of situation, and not of principle, produced this variety or distinction in the colony system of the two nations. France being able from her resources to supply most of the articles requisite for the consumption of her West Indies, and from her great population, having a proportionate demand for the productions of her islands, she has been carefully restrictive in the trade between her colonies and foreign countries as to the articles of import and export.

All the productions of her islands must go to the mother country, except rum and molasses; these articles were not confined to France, because they would have directly interfered with the valuable manufacture of her brandies. On the other hand, Great Britain, being less able from her internal resources to supply the articles necessary for the consumption of her West

Indies, and her population or home demand not requiring the whole productions of her islands, she has been more liberal in the trade allowed to be carried on between her colonies and foreign countries as to the articles of import and export. But her navigation being adequate to the whole trade of all her dominions, while that of France required the addition of foreign bottoms, Great Britain has excluded entirely from her colony trade the foreign vessels of all nations, while France has admitted them to share in the foreign trade permitted to her West India islands.

Both France and Great Britain relax their colonial laws, in times of occasional scarcity and when they are engaged in war; during which, the intercourse with their West India possessions is laid more open to foreigners. The catalogue of supplies is sometimes enlarged, and Great Britain, as well as France, during these relaxations, permits American vessels to resort to, and engage in the commerce of, their islands.

It is, notwithstanding, from the permanent laws alone of these nations, that we are able to infer their views in relation to their colony trade: the exceptions and deviations that become necessary, by reason of accidental scarcity or the embarrassments of war, serve only to explain more clearly the principles of the permanent system.

The result of this comparison affords no support for the assertion that France has been less exclusive, or more liberal in her colony system, than Great Britain—both these nations have in the establishment of their colonial laws alike disregarded the interests of foreign nations, and have been equally under the control of the principles of self-interest, which ever have, and ever will govern the affairs of nations.*

Nothing can be more erroneous, than the opinion that any nation is likely to yield up its own interest, in order, gratuitously, to advance that of another. Yet we frequently hear declarations of this kind, and too many honest citizens have surrendered them-

* The opinion heretofore cited of *Montesquieu*, a Frenchman, agreeing with facts, is a positive testimony that the principle of the French system, like the English, is *monopoly*.

selves to this delusion—time and experience will cure us of this folly.

Equal artifice has been practised, and no less credulity displayed, on the subject of a new treaty of commerce, which it is boldly asserted, France from the most *disinterested* motives has offered to us. It should be recollected that France already has a treaty of commerce with us, a treaty that is not limited to two years, nor twelve years, but one that is to endure for ever. This treaty is as favorable to France as she can desire, or we in our utmost fondness be disposed to make—it secures to her our acquiescence in an exclusion from her Asiatic dominions, and in fresh regulations as her interest shall dictate relative to our intercourse with her West India possessions—it excludes us from her fisheries on the banks of Newfoundland, which she was unwilling to share with us, and it gives to her every commercial favor or privilege which by treaty we may yield to any other nation, freely when freely granted, and when otherwise on yielding the same equivalent—her productions, her manufactures, her merchandises, and her ships may come into all our ports to which any other foreign productions, manufactures, merchandises, or ships may come—they are severally to pay only the *lowest* duties paid by any other nation, and no other nation in its intercourse and trade with us, is, in any instance, to have a preference over her. A variety of other regulations are inserted in this treaty useful to France and not particularly disserviceable to us.

This treaty has been religiously observed and executed on our part; France has repeatedly violated it in the article which makes enemy's goods free in neutral bottoms, while it is understood she has faithfully observed it in the article, that makes neutral goods lawful prize when found in enemy bottoms.

If it be true, that nations in justice to themselves are bound to decline the abandonment of their own interest, for the purpose of promoting at their own expense and detriment, the interest of others, ought we too readily to credit an opposite opinion? Ought we not to expect full proof of the sincerity of those declarations, that are intended to produce a belief of this disinterested and self-denying course? Ought not the very proposal

of such a measure, from its extraordinary nature, inspire circumspection, and put a prudent nation on its guard? If, moreover, the overture should occur at a moment when we are ascertained that those who make it, desire, and are, in fact, pursuing objects incompatible with the disinterestedness which it avows? If while it is said we wish that you should remain in peace with those who hold this language, neglect no means to engage our citizens to violate their neutral duties and thereby expose their country to war; if when we are told "we rejoice in the freedom of a sister republic," all the arts of intrigue, so much more dangerous by our unsuspicious temper, and unlimited affection for those who practise them, were employed to alienate our attachment from our own government, and to throw us into a state of anarchy; if when the fascinating proposal of opening new channels of commerce, which were to give unbounded riches to our merchants, was received with more caution than was desired, we are told that in case of refusal, or evasion (mark the generosity), France would repeal her existing laws which had been dictated by an attachment to the Americans. What must have been our infatuation, what the measure of our folly, had we given implicit credit to words so much at variance with cotemporary actions? But it is asked, do not the letters of Mr. Genet to Mr. Jefferson, which have been published, prove that France desired and offered to enter into a new, disinterested, and liberal treaty of commerce with us? The question shall be fairly examined.

There are two letters from Mr. Genet on this subject. Immediately after his arrival at Philadelphia, in a letter to Mr. Jefferson of the 23d May, 1793, he says—"The French republic has given it in charge to me to propose to your government to consecrate by a true *family* compact, by a national covenant, the liberal and fraternal basis, on which it wishes to establish the commercial and political system of two people, whose interests are inseparably connected."

If the object of this proposal was a revision of our commercial treaty, in order to render the intercourse between us more free and advantageous, this minister was singularly unfortunate in his expressions. He might have employed the fine phrase of

consecrating by a true family compact, by a national covenant, the liberal and fraternal basis on which it was wished to establish the commercial system of the two countries, and have been intelligible; but when he tells us, that he is instructed to open a negotiation with our government, for the purpose of establishing the commercial and political system of the two countries, what are we to understand? That trade and its regulations are alone in view? Or that a family compact establishing the political, as well as the commercial system of the two nations, must include likewise the league or treaty of alliance, whereby the strength and wealth of the two nations should be closely united in the prosecution of a common object?

This ambiguous overture, if its meaning is not too plain to allow the epithet, was received in the most friendly manner by our government, and on the suggestion that the Senate are united with the President in making treaties, it was understood between Mr. Jefferson and Mr. Genet, that the subject should be deferred till the meeting of Congress.

Before that period, however, Mr. Genet, in a letter of the 30th of September, 1793, renews the proposal to open the negotiation relative to the proposed family compact between us and France; and proves to us that our benefit was its principal exclusive object, by affectionately intimating in the conclusion of his letter, that he is further instructed to tell us, in case of refusal or evasion on our part to enter into this family agreement, that France will repeal the laws dictated by the attachment of the French for the Americans.

Had it before been doubted whether political engagements relative to war, were intended to be connected with the proposed treaty, these doubts must have disappeared on the receipt of this second letter from Mr. Genet; the intimation that the laws of France which operated favorably to our trade with their dominions, would be repealed, in case we refused or evaded the conclusion of a new treaty, cannot be reconciled with the belief, that this treaty was sought for from motives purely commercial, or solely to enlarge and add prosperity to our trade.

Mr. Genet at this time had so outraged our government as to have compelled them to request his recall; he must, therefore, have been convinced, that no conference would he held with him except on points of urgent importance, and such as would not admit of delay.—He was, therefore, answered by Mr. Jefferson on the 5th of November, that his letter had been laid before the President, and would be considered with all the respect and interest *that its objects* necessarily required; and in Mr. Jefferson's letter to Mr. Morris of the 23d of August, we are informed that our government were desirous to go into a commercial negotiation with France, and, therefore, requested that the powers given to Mr. Genet on that subject should be renewed to his successor. —It has not appeared that this was ever done.—His immediate successor, Mr. Fauchet, it is believed, gave no evidence of his having any powers relative to a commercial treaty; and if reports, which arrived with the present minister, having great marks of authenticity, may be credited, he has power only to *digest* the articles of such a treaty, not to *conclude one.*

Notwithstanding the internal evidence contained in the two letters of Mr. Genet was sufficient to have satisfied a sensible people, that something beyond a commercial treaty was connected with the proffered negotiation, and though this conjecture acquired strength from the cautious procedure of our government on the occasion: yet these letters, and that procedure, have been pressed upon the public as conclusive evidence, that France had offered, and our government refused, to enter into a new treaty of commerce, that would have been highly beneficial to our trade and navigation.

The refutation of this opinion so injurious to a reasonable and salutary confidence in the integrity and patriotism of our own executive government, and which the agents of its propagation had spread far and wide, might have been more difficult, had not the minister of France, for the purpose of justifying his own conduct, published his hitherto secret instructions.

By these instructions it appears, that the essential object of this proffered negotiation, was to engage the United States to make common cause with France in the war then foreseen, and

which soon broke out with Spain and England—That the advantages to be yielded by a new commercial treaty were to be purchased by our uniting with France in *extending the empire of liberty, in breaking up the colonial and monopolizing systems of all nations, and finally in the emancipation of the new world.**—This was laying out a large and difficult work, in the accomplishment whereof arduous and numerous perils must be met, to encounter which we were called by no obligation to others, to avoid which we were admonished by all the duties which require us to cherish and preserve our own unparalleled freedom, prosperity and happiness.

However contradictory this extraordinary project may appear to the friendly communications that had been made by the French government to ours, however repugnant to the soothing declarations pronounced by Mr. Genet, of the fraternal and generous sentiments of his country towards ours, and of the republican frankness and sincerity that should characterize his deportment; let the following extracts from his instructions published by himself in December, 1793, be consulted in confirmation of this statement, and as an authentic exposition of the genuine views of the French executive council in the mission of Mr. Genet—viz.:

"The executive council have examined the instructions given to the predecessors of the citizen Genet in America, and they have seen with *indignation*, that while the good people of America *have expressed to us their gratitude in the most lively manner, and given us every testimony of their friendship*, both Vergennes and Montmorin have thought that the *interests of France* required, that the United States *should not obtain that political order and consistency* of which they were capable, because they would thereby quickly attain a strength, which they might probably be inclined to abuse. These ministers, therefore, enjoined it upon the representatives of Louis XVI. in America, to hold a passive conduct, and speak only of the personal vows of the king for the prosperity of the United States. The same ma-

* This mad scheme, the joining in which was to be the price of the proffered advantages, has since been renounced by France herself as a political chimera.

chiavelism directed the operations of the war of independence, the same duplicity presided in the negotiations of the peace. The deputies of Congress had expressed a desire that the cabinet of Versailles should favor the conquests of the Floridas, of Canada, of Nova Scotia; but Louis and his ministers constantly refused their countenance, regarding the possession of those countries by Spain and England, as useful sources of disquietude and anxiety to the Americans."

After declaring that the executive council proposes to itself a different course, and that it approves of *the overtures*, which had been made as well by General Washington, as by Mr. Jefferson, to Mr. Ternant, relative to the means of renewing and consolidating the commercial regulations between the two countries, they proceed to declare further, "that they are inclined to extend the *latitude of the proposed commercial treaty* (observe, the first proposal of a new commercial treaty came from us, and not from France) by converting it into a national compact, whereby the two people should *combine their commercial with their political interests*, and should establish an intimate concert to befriend, under all circumstances, the extension of the empire of liberty, to guarantee the sovereignty of the people, and to punish the nations who shall continue to adhere to a colonial system, and an exclusive commerce, by declaring that the vessels of such nations should not be received into the ports of the two contracting parties. This agreement, which the French people will support with all the energy that distinguishes them, and of which they have given so many proofs, will quickly contribute to the emancipation of the new world. However vast this project may appear, it will be easily accomplished, if the Americans will concur in it, and in order to convince them of this, no pains must be spared by the Citizen Genet. For independent of the benefits that humanity will draw from the success of this negotiation, France, at this moment, has a particular interest that requires us to be prepared to act with efficacy against England and Spain, if, as every circumstance announces, these, in hatred of our principles, shall make war upon us." In this state of things, we ought "to employ every means to reanimate the zeal of the Ameri-

cans, who are also interested that we should disappoint the liberticide designs of George the Third, of which they likewise may possibly be an object." "The executive council *has reason* to believe, that these reflections, *joined to the great commercial advantages* which we are disposed to grant to the United States, will decide their government to agree to all that the Citizen Genet shall propose to them on our part—but as from the rumors respecting our interior, our finances, and our marine, the *American administration* may observe a wavering timid conduct! The executive council, in expectation that the American government will finally decide to make common cause with us, charges the Citizen Genet to take such steps as shall be most likely to serve the cause of liberty and the freedom of the people."

In a supplemental instruction, the executive council say, "as soon as the negotiation concerning a new treaty of commerce shall be practicable, Citizen Genet must not omit to stipulate a positive reciprocity of the exemption from the American tonnage duty." The mutual naturalization of French and American citizens, so far as respects commerce, that has been proposed by Mr. Jefferson and approved by the executive council (this, it is presumed, in the eyes of certain characters, would be free from objection, though the naturalization by treaty, of the subjects of any nation but France, would be treason against the Constitution and against liberty), "will render this exemption from the tonnage duties less offensive to the powers who have a right by their treaties to claim the same exemption, for the casus fœderis by this mutual naturalization will be entirely changed in respect to them. The reciprocal guarantee of the possessions of the two nations, stipulated in the XIth article of the treaty of 1778, must form an essential clause in the new treaty to be concluded! The executive council, therefore, instructs Citizen Genet early to sound the American government on this point, and to make it an indispensable condition of a free trade to the French West Indies, so interesting for the United States to obtain. It concerns the peace and prosperity of the French nation, that a people whose resources and strength increase in a ratio incalculable, and who are placed so near to our rich colonies, should be held by

explicit engagements to the preservation of these islands. There will be the less difficulty in making these propositions relished by the United States, as the great commerce which will be their price, will indemnify them beforehand for the sacrifices they must make in the sequel. Besides, the Americans cannot be ignorant of the great disproportion between their means and those of the French republic; that for a long time the guarantee will be merely nominal for them, while it will be real on the side of France. And moreover, that we shall, without delay, take measures to fulfil it on our part, by sending to the American ports, a force sufficient to shelter them from all insults and dangers, and to facilitate their intercourse with our islands and with France';—"and to the end that nothing may retard the conclusion of the negotiations of Citizen Genet with the Americans, and that he may have in his hands all the means which may be employed in forwarding the success of his exertions to serve the cause of liberty, the council, in addition to the full powers hereunto annexed, has authorized the minister of marine to supply him with a number of blank letters of marque, to be delivered to such Frenchmen or Americans, as should equip privateers in America; the minister of war will likewise supply him with commissions in blank for the different grades of the army."*

These were extraordinary means to enable the French minister to conclude with our government a pacific treaty of commerce. The above extracts, though not an entire translation of the whole of Mr. Genet's instructions, many parts of which are foreign to the point in discussion, are a faithful abstract of such parts of them, as relate to the principles and conduct of the French monarchy towards us, and are as explanatory of the views of the executive council on the subject of a new treaty of commerce.—It will, I think, prove, if the assertions of that council are to be credited, that the gratitude, of which we have heard so much, ought not to be demanded on account of the principles

* This measure countenances a conclusion, that it was the intent of the instructions, he should take the measures he did with regard to privateering and military expeditions from our territories, to force us into the war in spite of the "wavering and timid conduct of our administration."

that influenced the monarchy of France during our war, or subsequent to the peace; and furthermore, it will prove that the real view of the French executive council in the mission of Mr. Genet, was to engage us by advantages to be conceded in a new commercial treaty, *to make common cause* with France, in the expected war with Great Britain and the coalesced powers. If, then, the established footing of our trade with the British islands, has been dictated by that colonial system of monopoly, which forms a fundamental law in Europe; and if, moreover, the opinion that we could have procured a new and more liberal treaty of commerce with France, without plunging our country in the present war, is an error, that has been artfully imposed on the public; by exposing these truths, the examination of the treaty with Great Britain is at once freed from the objections and aspersions that have proceeded from these errors.

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It will be useful, as it will simplify the examination of the commercial articles of the treaty, to bear in mind and preserve the division, that we find established by the 12th, 13th, and the 14th and 15th articles; each respects a particular branch or portion of the trade between the two countries, the regulations whereof differ from, and are severally independent of, each other. Thus one is relative to the West Indies, another to the East Indies, and a third, distinct from both the former, respects our trade with the British dominions in Europe.

That Great Britain will consent to place our trade with her West India colonies upon an equally advantageous footing with her own, is improbable; this would be doing what none of the great colonizing nations has done, or is likely to do; it would be to relinquish the principal ends of the establishment and defence of her colonies; it would be equivalent to making her

islands in the West Indies the common property of Great Britain and America, for all commercial and profitable purposes; and exclusively her own in the burden of support and defence.

The senate have, however, and, I think, wisely, considered the terms and conditions, on which it is agreed by the 12th article, that we should participate in the trade of the British West Indies, as less liberal than we may, with reason, expect. The exclusion of all vessels above the burden of seventy tons, would diminish the benefits and value of this trade; and though we cannot calculate upon obtaining by future negotiation a total removal of a limitation on this subject, it is not altogether improbable that a tonnage something larger may be procured.

Those who are conversant with our present intercourse with the West Indies can best determine whether many vessels under seventy tons burden are not, at this time, profitably employed in that trade: It is believed to be true, that previous to our independence, vessels of this burden were much engaged in that employ as well in the southern as in the eastern states.

This limitation, though disadvantageous, is not the strongest objection to the 12th article: the restraining or regulating of a portion of our trade, which does not proceed from, and is independent of, the treaty, forms a more decisive reason against the article than any thing else that it contains.

The cause of this restraint is found in the commercial jealousy and spirit of monopoly, which have so long reigned over the trade of the colonies. Under our treaty with France and the French colonial laws, it has been shown that we could not procure from the French islands sugar, coffee, cocoa, cotton, or any of the other productions, molasses and rum excepted. Great Britain has seen it to be compatible with her interest to admit us to share more extensively in the productions of her islands; but she has desired to place limitations on this intercourse. To have left it entirely open and free, would have been to have enabled us not only to supply ourselves by means of our own navigation, but to have made it an instrument of the supply of other nations with her West India productions.

When we reflect upon the established maxims of the colony

system, and moreover when we consider, that an entire freedom of trade with the British West Indies might, at times, materially raise the price of West India productions on the British consumers, the supply of whom is essentially a monopoly in the hands of the British planters, we shall be the less inclined to believe that Great Britain will yield an unrestrained commerce with her West India possessions to any nation whatever.

But if this was the object of the restraint, it may be asked, why it was not confined to such enumerated articles as were of the growth or production of her own islands, instead of being so extended as to comprehend all molasses, sugar, coffee, cocoa, and cotton, including even the cotton of the growth of our own country? It is very possible that the circumstances of our native cotton's becoming an article of export to foreign markets might not have occurred to our negotiator—this would be the less extraordinary, as heretofore it has not been cultivated, except in a very limited degree, and as an article of export rather in the manner of experiment than otherwise; and, as moreover, from the expense and difficulty of separating the seeds from the cotton, we have been hardly able hitherto to class cotton among our exports. Its cultivation is said latterly to have become an object of attention, in Georgia and South Carolina—still however it cannot yet be considered as a staple commodity.—But from the recent ingenious and simple machine for spinning cotton, it is hoped that the cultivation may be extended, so that not only our own domestic manufactures may be relieved from a dependence on foreign supply, but the catalogue of our valuable exports enriched by the addition of this inestimable production.

In answer to the question that has been stated, it may be further observed, that these enumerated articles, though the productions of different territories, being so much alike as not easily to be distinguished, it is probable that the difficulty in discriminating the productions of the British islands from those of a different growth, was supposed to be so great, that an apprehension was entertained that the prohibition to re-export the former would be easily evaded and illusory, while the latter remained free.

This apprehension, however, it is believed, was carried too far; as, on a minute examination of the subject it will be found, that our laws relative to drawback, with a few analogous provisions in addition, can be made sufficiently to discriminate and identify, on re-exportation, all such articles of the growth of the British islands, as may be within our country, and that they will afford the same security for a faithful and exact execution of the prohibition to re-export such articles as that on which our own government relies against frauds upon the revenue. [The application of these laws, with the requisite additions and sanctions, may be secured by a precise stipulation for that purpose in the treaty, in such manner as would afford an adequate guard against material evasions.]

[But though the conduct of the senate in withholding their assent of this article, is conceived, upon the whole, to be well judged and wise, yet there were not wanting reasons of real weight to induce our negotiator to agree to it as it stands.

The inviolability of the principles of the navigation act had become a kind of axiom, incorporated in the habits of thinking of the British government and nation. Precedent, it is known, has great influence, as well upon the councils as upon the popular opinions of nations!—and there is, perhaps, no country in which it has greater force than that of Great Britain. The precedent of a serious and unequivocal innovation upon the system of the navigation act, dissolved as it were the spell by which the public prejudices had been chained to it. It took away a mighty argument derived from the past inflexibility of the system, and laid the foundation for greater inroads upon opinion, for further and greater innovations in practice. It served to strip the question of every thing that was artificial and to bring it to the simple test of real national interest, to be decided by that best of all arbiters, experience.

It may, upon this ground, be strongly argued that the precedent of the privilege gained was of more importance than its immediate extent—an argument certainly of real weight, and which is sufficient to incline candid men to view the motives that governed our negotiator in this particular, with favor, and the

opinion to which he yielded with respect. It is perhaps not unimportant by way of precedent, that the article, though not established, is found in the treaty.]

Though the 12th article, so far as respects the terms and conditions of the trade to the British Islands, forms no part of the treaty, having been excepted, and made the subject of further negotiation, it may nevertheless be useful to take notice of some of the many ill-founded objections that have been made against it: of this character is that which asserts, that the catalogue of articles, permitted to be carried by us to the British Islands, may be abridged at the pleasure of Great Britain, and so the trade may be annihilated.

The article stipulates that we may carry to any of his majesty's islands and ports in the West Indies, from the United States, in American vessels, not exceeding seventy tons, any goods or merchandises "being of the growth, manufacture or production of the said states, *which it is or may be* lawful to carry to the said islands, from the said states, in British vessels;" not all such articles as it is and may be lawful to carry, but in the disjunctive, all such as it is or may be lawful to carry; in other words, all such articles as it is now lawful to carry, together with such others as hereafter it may be lawful to carry; the catalogue may be enlarged, but cannot be diminished. [It may also be remarked incidentally, that this objection sounds ill in the mouths of those who maintain the essentiality of the supplies of this country, under all possible circumstances, to the British West Indies; for if this position be true, there never can be reasonable ground of apprehension of too little latitude in the exportation in British vessels, which is to be the standard for the exportation in ours.]

This article has been further criticised on account of the adjustment of the import and tonnage duties payable in this trade, and it has been attempted to be shown that the footing on which we were to share in the same would, on this account, be disadvantageous, and the competition unequal. What is the adjustment? The article proposes that British vessels employed in this trade shall pay, on entering our ports, the alien tonnage duty

payable by all foreign vessels, which is now fifty cents per ton; further, the cargoes imported in British bottoms from British West Indies, shall pay in our ports the same impost or duties, that shall be payable on the like articles imported in American bottoms; and on the other side, that cargoes imported into the British Islands, in American bottoms, shall pay the same impost or duties that shall be payable on the like articles imported in British bottoms—that is to say, the cargoes of each shall pay in the ports of the other only native duties, it being understood that those imposed in the British West Indies, on our productions, are small and unimportant, while those imposed in our ports, on the productions of the West Indies, are high, and important to our revenue.—The vessels of each shall pay in the ports of the other an equal alien tonnage duty, and our standard is adopted as the common rule.

Is not this equal? Can we expect or ask British vessels should pay an alien tonnage duty in our ports, and that American vessels should enter their ports freely, or on payment only of native tonnage duties? Can we in equity require them to pay, on the importation of their cargoes in British vessels, an addition of ten per cent on the duties payable on the importation of the like articles in American vessels, and at the same time demand to pay no higher or other duties on the cargoes carried in our vessels to the British Islands, than those payable by them on the like articles imported in British vessels? The very stating of the question suggests to a candid mind an answer, that demonstrates the injustice of the objection. [To expect more, were to expect that in a trade in which the opinions and practice of Europe contemplate every privilege granted for a foreign nation as *a favor*, we were by treaty to secure a greater advantage to ourselves than would be enjoyed by the nation which granted the privilege.]

But it is added that our laws impose a tonnage duty of six cents per ton on the entry of American vessels engaged in foreign trade, and it is not known that British vessels pay any tonnage duty on their entry in their ports in the West Indies—and so uniting the two entries, that is, the entry in the West Indies, and the entry on a return to our ports, an American vessel will pay

fifty-six cents per ton, when the British vessels will pay only fifty cents per ton. If the British government impose no tonnage duty on their own vessels, and we do impose a tonnage duty on ours, this certainly cannot form an objection against them. They are as free to refrain from the imposition of a tonnage duty on their own ships, as we are to impose one on ours. If their policy is wiser than ours in this respect, we are at liberty to adopt it, by repealing the tonnage duty levied on American navigation, which, if we please, may be confined to the particular case; the effect of such a measure, as far as it should extend, though the duty is small, would be to add a proportionable advantage to our shipping in foreign competition. But the object of the articles in this particular is to equalize, not the duties that each may choose to impose on their own vessels, but those that they shall impose on the vessels of each other; and in this respect the article is perfectly equal. [It is perhaps the first time that the objection of inequality was founded on a circumstance depending on the laws of the party affected by it, and removable at his own option.]

This view of the subject authorizes a belief, that, in the revision of the article, a modification of it may be agreed to that will prove satisfactory. Indeed, from the short duration of the article, taken in connection with the expressions made use of towards the close of it, relative to the renewal of the negotiation, for the purpose of such further arrangements as shall conduce to the mutual advantage and *extension* of this branch of commerce, we may infer that Great Britain contemplates a more enlarged and equal adjustment on this point.

The relaxations which now exist in the colonial systems, in consequence of the necessities of war, and which will change to our disadvantage with the return of peace, have been considered by some as the permanent state of things. And this error has had its influence in misleading the public in respect to the terms and conditions on which we may reasonably expect to participate in trade to the West Indies. But let it be remembered, that the restoration of peace will bring with it a restoration of the laws of limitation and exclusion, which constitute the colonial system.

Our efforts therefore should be directed to such adjustment with Great Britain on this point, as will secure to us a right after the return of peace, to the greatest attainable portion of the trade to her islands in the West Indies.

It has been alleged, should the expected modification of this article retain its present stipulation on the subject of import and tonnage duty, that as France by treaty may claim to enjoy the rights and privileges of the most favored nation, she would demand an exemption from the ten per cent. on the duties upon the productions of the West Indies imported in foreign bottoms, and would moreover be free to impose an alien tonnage on our vessels entering her ports in the West Indies, equal to that imposed on her vessels in our ports. This is true. But in order to make this demand, France must agree, *by treaty*, to open all her ports in the West Indies, to give us a right to import into them flour, bread, tobacco, and such other articles as Great Britain should permit, and which France by her permanent system prohibits; she must also concede to us a right to purchase in her islands, and bring away, sugar, coffee, and pimento, which by the same system she also prohibits; she must do all this, because, by our treaty with her, she can only entitle herself to a special privilege granted to another nation, by granting on her part to us the equivalent of what was the consideration of our grant. Should France be inclined to arrange the trade between us and her islands, we certainly shall not object; because, besides the right to such an arrangement, it would be more advantageous to us than that which now regulates our intercourse with her West Indies.

So much of the twelfth article as respects its duration and the renewal of the negotiation previous to the expiration of two years after the conclusion of the war, in order to agree in a new arrangement on the subject of the West India trade, as well as for the purpose of endeavoring to agree whether in any, and in what cases, neutral vessels shall protect enemy's property, and in what cases provisions, and other articles not generally contraband, may become such, form a part of the treaty as ratified by the president. These clauses sufficiently explain themselves, and require no comment in this place. They, however, prove one

point, which is, that after every effort on the part of our negotiator, the parties were not able to agree in the doctrine that free bottoms should make free goods, nor in the cases in which alone provisions and other articles not generally contraband, should be deemed such. Leaving, therefore, both these points precisely as they found them (except in respect to provisions, the payment for which, when by the law of nations liable to capture as contraband, is secured) to be regulated by the existing law of nations, it is stipulated to renew the negotiation on these points at the epoch assigned for the future adjustment of the West India trade, in order then to endeavor to agree in a conventional rule, which, instead of the law of nations, should thereafter regulate the conduct of the parties in these respects.

[The eleventh article has been passed over in silence as being merely introductory and formal.]

CAMILLUS.

NO. XXVI.

1795.

The British trade to their possessions in the East Indies, as well as to China, is a monopoly vested by the legislature in a company of merchants. No other persons in Great Britain, nor in any of her dominions or colonies, can send a vessel to, or prosecute trade independent of the company, with any part of Asia. The right to trade with their possessions in India is not only refused to all British subjects, the India company excepted, but is one, that Great Britain has never before yielded by treaty to any foreign nation. By the terms of the charter to the India company, among a variety of limitations, they are restrained and confined to a direct trade between Asia and the port of London; they are prohibited from bringing any of the productions of India or China directly to any part of America, as well to the British colonies as to our territories; and moreover they are restrained from carrying any of the productions of Asia, directly

to any part of Europe, or to any port in Great Britain, Scotland, or Ireland, except the single port of London.

The 13th article stipulates, that our vessels shall be admitted in all the sea-ports and harbors of the British territories in the East Indies, and that our citizens may freely carry on a trade between said territories and the United States, in all such articles, of which the importation or exportation shall not be entirely prohibited; provided only, that when Great Britain is at war, we may not export from their territories in India, without the permission of their local government there, military stores, naval stores, or rice. Our vessels shall pay in this trade, the same tonnage duty as is paid by British vessels in our ports; and our cargoes on their importation and exportation shall pay no other or higher charges or duties than shall be payable on the same articles when imported or exported in British bottoms; but it is agreed that this trade shall be direct between the United States and the said territories; that the article shall not be deemed to allow the vessels of the United States to carry on any part of the coasting trade of the British territories in India, nor to allow our citizens to settle or reside within the said territories, or to go into the interior parts thereof, without the permission of the British local government there.

The British trade to their territories in the East Indies is carried on by a corporation, who have a monopoly against the great body of British merchants. Our trade to the same territories will be open to the skill and enterprise of every American citizen. The British trade to these territories is direct, but confined to the port of London; our trade to the same must likewise be direct, but may be carried on from and to all our principal ports.

The article gives us a right in common with the India company to carry to these territories, and to purchase and bring from thence, all articles which may be carried to or purchased and brought from the same, in British vessels: our cargoes paying native duties, and our ships the same alien tonnage as British ships pay in our ports. This trade is equally open to both nations; except when Great Britain is engaged in war, when the

consent of the British local government is required in order to enable us to export naval stores, military stores, and rice; a limitation of small consequence; none of the articles except nitre being likely to form any part of our return cargoes. Though this article is one against which the objection of a want of reciprocity (so often, and so uncandidly urged against other parts of the treaty) has not been preferred, it has not however escaped censure.

It is said that we are already in the enjoyment of a less restrained commerce with the British territories in India, and that the treaty will alter it for the worse: inasmuch as we thereby incapacitate ourselves to carry on any part of the coasting trade of the British territories in India, and as we relinquish the profitable freights to be made between Bombay and Canton, and likewise those sometimes obtained from the English territories in Bengal to Ostend.

It would seem a sufficient answer to say, that this trade has heretofore existed by the mere indulgence of those who permitted it, that it was liable to variations, that a total exclusion, especially had it been of us in common with other foreign nations, could have afforded no just ground of complaint: that the relaxation which has hitherto given us admission to the British Indian territories, was not a permanent, but a mere temporary and occasional regulation, liable to alteration, and by no means to be demanded as the basis of an intercourse to be adjusted by compact, with a foreign nation, which would no longer leave the power of alteration in either of the parties.

But in respect to the first objection, the article amounts to this, that the rights which it does grant, shall not by implication be construed to give a right to carry on any part of the British coasting trade in India.

If we have before shared in this trade by permission, nothing in the article will preclude us from enjoying the same in future. If we did not participate in it, nothing in the article impairs either the authority of the British local government to permit our participation or our capacity to profit by such permission. This

objection, therefore, falls to the ground, since the coasting trade remains as it was before the treaty was formed.*

[Further, according to my information]—It is not the trade between the East Indies and China, as has been erroneously supposed by some persons, but the exportation of rice and other articles, which are exchanged between the British territories in the hither and further Indies, that is denominated the coasting trade of the British territories in India. The importance of this trade is not well understood; nor am I able to say whether we have heretofore been allowed to carry it on. If we have, the little that we have heard of it, leads to an opinion that it is not an object of much consequence. Let it, however, be granted that hereafter we shall not be allowed to engage in it. Shall we have more reason to complain of this exclusion, than we have that we are refused a share in the coasting trade of the European dominions of Great Britain? or that we are excluded from the coasting trade between their islands in the West Indies? Or than the British themselves have, that by our prohibiting tonnage duty (being fifty cents per ton on entry of a foreign vessel, when our own coasting vessels pay only six cents per ton, for a year's license) they are excluded from sharing in our coasting trade; a branch of business that already employs a large proportion of our whole navigation, and is daily increasing.

In respect to the second and third objections, it may be remarked, that so far as the trade has been heretofore enjoyed, it has been in consequence of an exception from, and relaxation in, the system by which the European commerce has been regulated; that having depended on the mere occasional permission of the local government, we may safely infer (though it may have been supposed incompatible with the discretionary powers, vested in that government, to confer by treaty a positive right to carry on the trade in question) that so long, and as often as the interest

* [The terms used clearly denote this and nothing more; they are—"It is also understood that the *permission granted by this article* is not to extend to *allow*." This does not negative any pre-existing indulgence, but merely provides that the main grant shall not convert the *revocable indulgence*, if any there was in this particular, into an *irrevocable right* by treaty.]

that has heretofore induced the grant of this permission shall continue or exist, the permission will be continued or renewed. The stipulation, restraining the trade, may, if the parties see fit, be dispensed with, and the trade may be enlarged, or made free. It being a contract only between them and us, the parties are free to remodify it; and without a formal alteration, if those in whose favor the restraint is made consent to remove it, the other party is released from the obligation to observe it.*

Again—Surat, which is in the neighborhood of Bombay, is the emporium of Guzerat, and of the northern portion of the Malabar coast; the cottons shipped from Bombay to Canton, are frequently first sent from Surat to Bombay. Surat belongs to the native powers to which we have free access. If the transportation of cotton and some few other commodities from the coast of Malabar to Canton is an important branch of our commerce, what will prevent our prosecuting it from Surat or any other free port in the hither Indies?

That it may be undertaken from the ports of the native powers is rendered probable by the circumstance, that these freights are supplied principally or alone by the native or black merchants, whose residence would naturally be in the ports under native jurisdiction more frequently than in those under the jurisdiction of any of the foreign powers.

But is it not true (and will not candor admit it) that the trade to the Asiatic dominions of the European powers has usually been confined to the nation to whom such territories belong? In our treaty with Holland, have we not even stipulated to respect

* [This has been affected to be questioned on account of what is called the peremptoriness of the expressions (to wit), "It is *expressly agreed* that the vessels of the United States *shall not carry*, &c." But there is no real room for the question—In a contract between two parties, whether individuals or nations, where a restraint is imposed upon one for the benefit of another, it is always an implied condition of the restraint that it shall continue, *unless dispensed with* by the party for whose benefit it is imposed.—Thus the British government in India may remove the restraint, by continuing the indulgence in this respect heretofore granted.—And it seems to me clear that the law which the United States are to pass, for enforcing the prohibition, may, with good faith, be qualified with this provision, "*unless by permission of the British* government *in India.*"]

their monopoly of this trade? And by our treaty with France, a nation whose liberal policy is said to have laid us under eternal obligations of gratitude, have we acquired the slightest pretensions, much less a right, to resort to, or trade with any part of their Asiatic territories?

A late decree of the convention which opened to us the ports in their West Indies, likewise laid open their remaining territories in Asia. But this measure proceeding from the necessities of the war and their inability to carry on their foreign commerce, will change hereafter, as heretofore it has done, with the establishment of peace. Did this opinion require to be strengthened, it is abundantly confirmed by the navigation act, decreed by the convention: the operation whereof is suspended for the same reason that induced the opening to foreigners that trade to their colonies and territories in the West and East Indies.

The British for more than a hundred years excluded foreigners from a share in their East India trade; for a few years past they relaxed in the rigor of this system. We have availed ourselves of this circumstance, and shared with them in their India commerce. But this permission can be viewed only as an occasional departure from a general law; which may be affected by a change of circumstances, the duration of which, therefore, is uncertain. The loss and inconvenience to which our merchants may be exposed from the prosecution of a trade, depending on regulations arising from inconstant circumstances, and which frequently vary, may, in some measure, be guarded against, where the scene is not remote, and the alterations in the laws can be known soon after they are made. But in the Asiatic and in our other distant commerce, it is of importance that the laws under which an adventure is begun, should be permanent. Losses to a considerable amount have been experienced by some of our merchants, who have undertaken distant voyages in the expectation of the continuation of these temporary regulations. The trade, for example, with the Cape of Good Hope (which the Dutch government ordinarily monopolize to their own people) was some time since opened to foreigners, and some of our citizens profited by it; but others, who had engaged in large adven-

tures to that market, suffered no small disappointment and loss in finding themselves excluded, upon their arrival, by a repeal of the permission to foreigners to trade there. It must then be considered as an important object secured, in respect to the principal proportion of our India trade, that alone which is capable of being pursued as a branch of our commerce, that the treaty turns a *favor* into a *right*, and that our direct intercourse with the British territories in the East Indies, in all respects as broad as that of Great Britain herself (except in the articles of rice, naval and military stores, when Great Britain is engaged in war), instead of being an uncertain and hazardous trade, as heretofore, from its precarious nature, it has been, will, hereafter, be as certain as any in which our merchants shall engage.

It is further alleged, by way of objection to this article, that it does not secure to our citizens a right to reside and settle in the British territories in India, without the consent of the British local government. The observation that has been made on a similar objection, in respect to the coasting trade in India, is equally applicable to this. The article leaves subjects precisely in the situation in which it found them. But let it be remembered that the disproportion between the numbers of the native Indians and the foreigners inhabiting their country, is more than one thousand of the former to one of the latter—that the most exact discipline and subordination among the foreigners are therefore essential to the preservation of the British authority over that country—that no foreigner, or even a British subject, is allowed to reside there, except in the character of a servant of the company, or of a licensed inhabitant—that it has long been held as a sound opinion, that unrestrained liberty to the Europeans to emigrate to, and settle among the Indians, would, in a short time, overturn and destroy the British empire in India. This danger would by no means be diminished by conferring a right upon the Americans, freely to reside and settle in India—that we shall be allowed to reside and settle there by permission of the local British government, is fairly to be inferred from the article. But an [absolute right] to an entire liberty on these points, might evidently be dangerous to the British government over India—[and in prudence could not have been stipulated.]

The advantageous footing on which the trade is placed, is so evident, that those who had no reliance on the objections urged against it, but who, nevertheless, have been unwilling to allow the treaty any merit on the score of this article, have endeavored to show that our India trade is of little importance, and of small value.

Whatever article can be supplied by the India Company, may likewise be supplied by us, and some of them on better terms by us, than by them. The reports of the committee of the directors of the East India company, published in 1793, when their charter was renewed, afford useful information on this subject, and disclose facts which show the advantages that we shall possess in this trade over the company. They admit, that in the articles of iron, wines, canvas, cordage, arms, and naval and military stores, foreigners can enter into a beneficial competition with them; and that canvas and cordage, and we may add, all naval stores and several other articles, can always be furnished in India by foreigners, cheaper than by the company.

If we appreciate the advantage we have over them, in such articles of supply as are of our own growth or production, as well as in the wines not unusually procured by touching at Madeira on the outward voyage to India, and compare it with the advantage that they have over us in the few articles of choice, which they purchase at the first hands, and which we must import in order to re-export to India, it is probable that our cargoes to India will, on the whole, be laid in as advantageously, if not more so, than those of the India company. If we consider the vast extent of territory, the numerous population, and the established manufactures of India, so far from supposing that a free trade to that country will be of little value to a young and enterprising nation, whose manufactures are still in their infancy, we ought rather to conclude that it is a country with which we should be solicitous to establish a free trade and intercourse.

Every one who has bestowed the slightest attention upon the foreign manufactures consumed in our country, must have observed the general and increasing use of those of India, owing to the better terms on which they can be procured from Asia than

from Europe. Though no document is at hand that will show the value of the annual importations from India, it is stated by Mr. Coxe, in his View of the United States, that the amount in value of our importations from Asia is more than one fifth of the value of our whole annual consumption of foreign commodities. It is true that the porcelain, silks, nankeens, and teas of China, form a large portion of this annual importation. But, after a full deduction on this account, a great and profitable branch of our commerce will be found in our trade to the East Indies. It should be remembered, [also,] that it is not the consumption of our own country that regulates the quantity of India goods that we import; other countries have been supplied through us with the fabrics and productions of both India and China. The treaty will enlarge this demand.*

Several circumstances calculated to give our trade with Asia, an advantage against foreign competition, and a preference to our trade with Europe, are deserving of attention.

First.—The direct trade between us and Asia, including the East Indies as well as China, cannot be prosecuted by the British East India company, their ships being obliged to return to the port of London, and there to discharge.

Second.—The difference between the duties on Asiatic goods imported in American bottoms direct from Asia, and the duties imposed on the same goods in foreign bottoms from Asia or from Europe; being on all articles a favorable discrimination, and in the articles of teas, the duties on those imported in foreign bottoms being 50 per cent. higher than on those imported in American bottoms.

The particular difference of duties on Asiatic goods imported in American and in foreign bottoms, so favorable to our own navigation, will not be affected by the right reserved by Great Britain to impose countervailing duties in certain cases; that right being relative to the intercourse between the United States and the British territories in Europe.

* Perhaps from the certainty of the rights which it confers, it may invite a foreign capital to extensive enterprises, in which the United States will be an *entrepot* between India and a great part of Europe.

Third.—The European intercourse with Asia is, in most cases, conducted by corporation or exclusive companies, and all experience has proved that in every species of business (that of banking and a few analogous employments excepted), in conducting of which a competition shall exist between individuals and corporations, the superior economy, enterprise, zeal, and perseverance of the former, will make them an overmatch for the latter; and that while individuals acquire riches, corporations, engaged in the same business, often sink their capital and become bankrupt. The British East India company are moreover burdened with various terms and conditions, which they are required to observe in their Asiatic trade, and which operate as so many advantages in favor of their rivals in the supply of foreign markets. The company, for example, are obliged annually to invest a large capital in the purchase of British manufactures to be exported and sold by them in India; the loss on these investments is considerable every year, as few of the manufactures which they are obliged to purchase, will sell in India for their cost and charges; besides, from the policy of protecting the home manufactures, the company are, in a great measure, shut out from supplying India goods for the home consumption of Great Britain. Most of the goods which they import from India, are re-exported with additional charges, incurred by the regulations of the company, to foreign markets, in supplying of which we shall be their rivals, as from the information of intelligent merchants, it is a fact that Asiatic goods, including the teas of China, are, [on an average,] cheaper within the United States than in Great Britain.

Fourth.—The manufactures of Asia are not only cheaper here than in Europe, but in general they are cheaper than goods of equal quality of European manufacture. So long as from the cheapness of subsistence and the immense population of India (the inhabitants of the British territories only being estimated at forty millions) the labor of a manufacturer can be procured from two to three pence sterling per day, the similar manufactures of Europe, aided with all their ingenious machinery, is likely, on a fair competition, in almost every instance, to be excluded by

those of India. So apprehensive have the British government been of endangering their home manufactures by the permission of Asiatic goods to be consumed in Great Britain, that they have imposed eighteen per cent. duties on the gross sales of all India muslins, which is equal to twenty-two per cent. on their prime cost. The duties on coarser India goods are still higher, and a long catalogue of Asiatic articles, including all stained and printed goods, is prohibited from being consumed in Great Britain.

The British manufacturers were not satisfied even with this prohibitory system; and on the late renewal of the company's charter, they urged the total exclusion from British consumption of all India goods, and moreover proposed that the company should be held to import annually from India a large amount of raw materials, and particularly cotton, for the supply of the British manufacturers.

Those facts are noticed to show the advantages to be derived from a free access to the India market, from whence we may obtain those goods which would be extensively consumed even in the first manufacturing nations of Europe, did not the security of their manufactories require their exclusion.*

CAMILLUS.

NO. XXVII.

1795.

The third article contains the terms and conditions of the trade and intercourse that it authorizes between us and the British colonies on the American continent. The twelfth article was intended to adjust the trade between us and the British

[* Great Britain has made it a serious point, in which she has in more than one instance succeeded, to engage foreign powers (the emperor was one) to renounce establishments for carrying on the trade with India, from their own territories: yet this treaty opens all the territories to us. And yet it is not only denied merit, but criminated, in this very particular.]

islands in the West Indies. The thirteenth article secures to us a direct trade with the British territories in the East Indies; and it is the office of the fourteenth and the fifteenth articles, to ascertain and establish the terms of the intercourse and trade between the territories of the United States and the British dominions in Europe.

The fourteenth article establishes a perfect and reciprocal liberty of commerce and navigation between the territories of the United States and of the British dominions in Europe; stipulates that *the people and inhabitants* of the two countries respectively, namely, of the United States, and of the British dominions in Europe, shall have liberty to come with their ships and cargoes to the ports, cities, and places of each other, within the territories and dominions aforesaid, to resort and reside there, without limitation of time, to hire houses and stores for the purpose of commerce; and that the merchants and traders on each side shall enjoy, for their commerce, the fullest protection and security, subject, notwithstanding, in respect to the stipulations of this article, to the laws of the two nations respectively.

As this article, in the customary language employed in the introductory articles of commercial treaties, speaks of a perfect liberty of commerce and navigation, without excepting any commodity, or specifying any impost or duty, it was possible that a latitude or freedom of trade, inconsistent with the revenue laws, and policy of the two nations, might have been claimed under it; hence the propriety of the provision with which the article concludes, and which reserves to the parties respectively, the power of avoiding this inconvenience, by continuing and enacting such laws as may be proper for the purpose.

But as under this power again, partial duties, and even partial exclusions, might have been established, whereby ships and merchandises, as well as the articles of the growth, produce, or manufacture of one of the parties, might have been made liable to higher duties and imposts in the territories of the other, than the ships and similar merchandises, and articles of the growth, produce, or manufacture of other nations; or whereby one of the parties might prohibit the importation or exportation, by the

other, of any article to and from his territories, the importation or exportation whereof was at the same time free to some other nation: in order to prevent such inequalities, and to secure effectually to the parties, a right to carry on their trade with each other on terms equally advantageous and extensive, with those established by either, with any other nation, the fifteenth article stipulates—

1. That no other or higher duty shall be exacted or paid, on the ships and merchandises, nor on the articles of the growth, produce, or manufacture of one of the parties, on their entry or importation into the territories of the other, than shall be payable on the like ships, and merchandises, and on similar articles of the growth, produce, or manufacture of any other nation.

2. That no article, the importation or exportation of which by either party, to or from the territories of the other, is prohibited, shall be imported or exported to or from the same by any other foreign nation; and that every article allowed to be imported or exported to or from the territories of either party, by any foreign nation, may be imported or exported to or from the same, by the parties respectively.

By these stipulations it is agreed, that the people and inhabitants of the United States and of the British dominions in Europe, shall have the right to carry on trade between the said territories in all articles and commodities in which any other foreign nation may trade with either of the parties; that the impost or duties on any article in the course of such trade, shall be no other or higher than the lowest imposts or duties paid by any other foreign nation on the like article; that both parties shall remain free, totally to prohibit the importation or exportation, to or from their respective territories, of any species of goods or merchandise, or to increase the existing duties, or to impose new ones on the importation of any species of goods or merchandises, into their respective territories; such prohibitions and duties operating equally against all foreign nations. So far as respects the interchange of commodities between the parties, these stipulations breathe the spirit of reciprocity: the residue of the fifteenth article principally relates to the navigation which the parties shall employ in this trade.

The first clause of the 15th article, in the spirit of those treaties which mutually confer the right of the most favored nations, stipulates that no other or higher duties shall be paid by the ships of the one party in the ports of the other, than such as are paid by the like vessels of all other nations.

By our laws, a difference exists between the tonnage duty paid by an American vessel, and that paid by a foreign vessel in our ports; the American vessel pays only six cents per ton on her entry, the foreign vessel, on her entry, pays fifty cents per ton, and about twenty per cent. more duties on all teas imported from Europe, and ten per cent. more duties on the importation of other goods, than are payable on the importation of the same goods, in an American vessel.

By the British laws, the difference between the duties paid by British and foreign vessels in the British ports in Europe, is less than that which exists in our ports: the consequence is, that a British vessel, of a given burden, pays considerably more tonnage duties in the trade between our territories and the British ports in Europe, than is paid by an American vessel of the same burden, engaged in the same trade.

The trade being laid open to both parties, the principle of equalization of duties was very naturally deemed an equitable basis of treaty. This could be effected by lowering the American alien duties to the British standard, or by raising those of Great Britain to the American standard. The former might have been inconvenient to our revenue, [especially since, if it was not general, it would have formed, in respect to foreign nations, an unpleasant discrimination in our laws.]

The American tonnage duty, therefore, was left to operate; and by the 15th article, it is agreed, that the British government shall reserve a right to raise the tonnage duty on our vessels entering their ports in Europe, so as to make it *equal* to the tonnage duty payable by their vessels entering our ports: and in order to balance the difference of duties on goods imported into our ports by American or by British vessels, the effect whereof is the same as that which proceeds from an alien tonnage duty, the article further agrees, that the British government shall reserve a

right to impose such duty as may be adequate to effect this end. The preceding clause of this article stipulates, that the vessels and cargoes of each shall pay no higher or other duties than those imposed on the like vessels and cargoes of all other nations; it was, therefore, necessary to reserve a right to increase against us, their alien tonnage duty, and to impose the countervailing duty in question; as without such reservation, the same could not have been done, unless by laws equally operating against all other nations—[which would have been unjust in reference to such of them as might not, like us, have discriminated in their duties between their own and foreign vessels.]

Two methods have been suggested, by which this countervailing power might be executed.

One by imposing a *pro rata* duty on the importation of goods into the British ports in Europe by American vessels, equal to the difference between the duties payable in our ports on the importation of goods by American or British vessels.

[The other,] by imposing the identical duty on the exportation of goods from the British ports in Europe, by American vessels, which forms the difference between the duties payable on the importation of the same goods into our ports by American or British vessels.

As the articles imported by our vessels into the British ports in Europe, are dissimilar from those imported from the same into our ports, one rule of difference would not effect the equalization sought for; and as our difference of duties is not the same on all articles, being higher on some than on others—[and as, moreover, the quantities and amount of different articles differ widely, and are liable to continual proportional variations,] no uniform [average] rule of countervailing these differences can be devised; the [correct] execution, therefore, of this power, in the method first suggested, is impracticable, and, [it is presumed,] must be discarded.

The power, then, [it would seem,] can only be [equitably] exercised by imposing on the articles which we shall export in American vessels from the British ports in Europe, a duty identically the same as that which constitutes, in any case, the differ-

ence of duty, payable in our ports, on the same articles imported from the British ports in Europe, by a British or American vessel. Thus they may impose on tea and other Asiatic goods, as well as on the European goods, which we shall export from the British ports in Europe, the identical duty or the same sum which constitutes the difference of duties payable in our ports on the importation from thence of the same articles by an American or a British vessel.

The right to countervail our alien tonnage duty by imposing an alien tonnage duty on our vessels entering the British ports in Europe, equal to that which shall be payable on their vessels entering our ports, will continue so long as the commercial treaty shall endure, and will apply to any future increase of the tonnage duty on foreign vessels that we may establish; it is however stipulated in the conclusion of the fifteenth article, that we shall abstain from increasing the tonnage duty on British vessels, and also from increasing the difference that now exists between the duties payable on the importation of any articles into our ports in British or in American vessels, until the expiration of two years after the termination of the war between France and Great Britain. But we are free to increase the one or the other, after the expiration of that period; and though the British government will have a right to countervail, by additional tonnage duties, on our vessels, any increase of that duty on their vessels; yet they will have no right to countervail any increase of the difference between the duties payable on the importation of any articles into our ports, in British or in American vessels, unless by a duty common to all foreign nations; the right reserved on this subject, being confined to the difference that *now* exists, will not reach such future increase.*

From this analysis of the 14th and 15th articles, we are the better enabled to perceive the truth of the following propositions.

* How ridiculous, then, the argument, if the basis of it were otherwise true, that the treaty, by tying up the government from future discrimination, has prostrated our navigation before Great Britain! Can a restraint which is only to operate the short term of two years after the termination of the present war, have the mighty effect of sacrificing our navigation?

1. As, for the purpose of encouraging or protecting the agriculture and manufactures of Great Britain, several of our productions, in common with similar productions of the other nations, are prohibited from being imported into the British ports in Europe; we are free, whenever our interest shall require it, also to exclude any of the productions of the British dominions from being imported into our ports, extending such exclusions, as they do, to the like manufactures and productions of foreign nations.

Should that part of the twelfth article, which has not been ratified, in its modification retain the stipulation relative to the importation of coffee, sugar, and the other productions of the West Indies, it would constitute an exception to this proposition. But as the West India productions are dissimilar to those of our own country, they would not fall within the reason of these prohibitions, and, therefore, the exception would be of no consequence.

2. As, for the like reasons, some of our productions are subject, in common with the like productions of other nations, to high, or prohibitory duties in the British ports in Europe, we are free, likewise, to impose similar duties on any of the productions or manufactures of the British dominions, extending such duties, as they do, to the like productions and manufactures of other foreign nations.

3. As the navigation act of Great Britain, in order to extend their own shipping, has heretofore confined the importation of foreign productions into the British ports, to British ships, and to the ships of the country producing the same; the 15th article [appears] to contain an important innovation on this celebrated act; inasmuch as [by the most obvious construction of the terms] it gives us a right to import from our own territories into the British ports in Europe every article and description of goods and merchandises, which any nation in their own ships is allowed to import. In consequence whereof, while all other foreign nations are prohibited and restrained from importing in their own vessels into Great Britain any goods or merchandises, except those of their own particular growth, produce, or manufacture, we, by the treaty, have a right to carry from our ports to the British ports in Europe, not only goods and merchandises of our

own growth, produce, or manufacture, but also of such goods and merchandises, the growth, produce, or manufacture of any foreign nation, as a nation producing or manufacturing the same, would import in their vessels into Great Britain.

4. Should it ever be politic to exclude all foreign vessels from importing, or exporting, any species of goods, wares, or merchandises, by confining their importation or exportation to our own vessels; we are perfectly free to do so; with the exception, relative to the West India productions, referred to under the first proposition; thus, for example, we may prohibit the importation of all Asiatic goods, except in American bottoms.

That these articles of the treaty leave our navigation and commerce as free, and secure to us as extensive advantages as have before been procured by our commercial treaties with foreign nations, will be seen by the following comparison:

1. By the articles before us, the parties restrain themselves from imposing any other or higher duties on the vessels and cargoes of each other, than they impose on the vessels and cargoes of all other nations; and also from imposing a prohibition of the importation or exportation of any article to or from the territories of each other, which shall not extend to all other nations. By the 3d and 4th articles of our treaty with France, and by the 2d and 3d articles of our treaty with Prussia, it is stipulated, that the subjects and citizens of the respective parties, shall pay, in the ports, havens, and places of each other, no other or greater duties or imposts, of whatsoever nature they may be, than those which the nations most favored shall be obliged to pay: and moreover, that they shall enjoy all the rights, liberties, privileges, and exemptions in trade, navigation, and commerce, which the said nations do, or shall enjoy: and by the 2d article of the former, and the 26th article of the latter treaty, the parties agree mutually, not to grant any particular favor, in respect to navigation or commerce, which shall not immediately become common to the other party, who shall enjoy the same favor, if freely granted, or on allowing the same compensation, if the concession was conditional.

The stipulations in the three treaties are, on these points, equivalent.

The 2d and 3d articles of our treaty with Holland, and the 3d and 4th of our treaty with Sweden, likewise contain mutual stipulations, that the subjects and citizens of the several parties shall pay in the ports, havens, and places of their respective countries, no other or higher duties or imposts than those which the nations most favored shall pay; and that they shall enjoy all the rights, liberties, privileges, and exemptions in trade and navigation, which the said nations shall enjoy.

2. The articles before us, after stipulating that there shall be between our territories and the British dominions in Europe, a reciprocal and perfect liberty of commerce, declare, that the same shall be subject always to the laws of the respective countries. The introductory articles of our treaties with France, Holland, and Sweden, after asserting the intentions of the parties to take equality and reciprocity as their basis, likewise leave each party at liberty to form such regulations respecting commerce and navigation as it shall find convenient to itself—and the 2d and 3d articles of our treaty with Prussia, after stipulating the rights of the parties, respecting the duties and imposts, and the freedom of their navigation and trade, likewise require their submission to the laws and usages established in the two countries.

3. The articles before us, in their provisions relative to navigation, stipulate, as has been already observed, in common with our other treaties, that the ships of the parties shall not be subject to higher or other duties, than those paid by all other nations. They go farther, and agree to vary this rule, so far as shall be necessary to equalize the tonnage duty imposed by the parties on the ships of each other. Our treaty with France is the only one in which we discover a similar stipulation.—France had a high alien tonnage duty on all foreign vessels transporting the merchandise of France from one port to another port in her dominions. We had a less alien tonnage duty on foreign ships employed in a similar trade: though not equally extensive, the case is parallel to that which exists between us and Great Britain. We have a high alien tonnage duty on all foreign vessels entering our ports; Great Britain has a less alien tonnage duty on foreign vessels entering her ports. In our treaty with France we reserve

a right to countervail the alien tonnage duty imposed by France; and in like manner, in our treaty with Great Britain, she reserves a right to countervail the alien tonnage duty imposed by us. The object, in both instances, has been to place the navigation of the parties on the footing of exact equality.

The preceding exposition of these articles, illustrated by the comparison of their provisions, with the analogous articles of our other treaties, would be sufficient to vindicate them against the objections to which they have been exposed.—It is, however, thought advisable to take notice of such of these objections as are likely to have any influence on the public opinion.—[This will be done in a subsequent number.]

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An extraordinary construction of the last clause of the fourteenth article has been assumed by the writer of Cato; his mistake in this instance has been the foundation of many of the errors with which that performance abounds. The article stipulates that there shall be a perfect and reciprocal liberty of navigation and commerce between our territories and those of Great Britain in Europe, subject *always* to the laws and statutes of the two countries, respectively. This navigation and commerce, says Cato, must be subject to, and defined and regulated by the laws and statutes of the two countries, which existed at the time of making the treaty, all future laws, that either party might be disposed to make, relative to the same, being excluded.

The reason assigned, in support of this interpretation, is, that the article would be nugatory, did not the laws and statutes alluded to, mean only those in existence at the making of the treaty; since future laws might impair or destroy what the article confers.

Nothing in the expressions themselves requires this interpretation.

The customary and established meaning of them in other treaties would lead to a rejection of it.—The object of the clause is not the limitation of the legislative power of the parties, but the subjection of their mutual navigation and commerce to their respective laws.—This end is most fully attained by understanding the parties to mean their future as well as their existing laws. Besides, the interpretation must be such as will not destroy the use and meaning of other parts of the treaty. If this construction is just, some of the most important stipulations of the fifteenth article would really become useless. For instance, if the laws, existing at the time of making the treaty, are alone to prevail, the articles of commerce, admitted or excluded by those laws, must remain entitled to admission or liable to exclusion. Why then say in the fifteenth article "that no prohibition *shall be imposed* on the exportation or importation of any articles to or from the territories of the parties respectively, which shall not extend to all other nations?" If a prohibition, applying to all foreign nations, may be imposed (as the clause allows), this would be a new or subsequent law, varying the law existing at the time of making the treaty, and consequently defeating the construction in question.

The reason adduced by Cato to support his construction is equally defective with his interpretation itself. The fourteenth article is in general terms, and similar, as has been shown, to the introductory articles of other treaties; so far from the last clause thereof being capable of destroying the preceding stipulations, it is the peculiar province of the next article to ascertain the points which the parties mutually agree to except from their legislative power. In all cases not thus excepted, the navigation and commerce of the parties is subject to their existing or future laws.

It is not necessary to remark on the several objections which have proceeded from the opinion that the treaty restrains us from imposing prohibitory duties and exclusions: they are but subdivisions of the error that has been just combated.

Another objection which has been stated by several writers,

and much labored by Cato, is, that under the right reserved to the British government to countervail an alien tonnage duty, by the imposition of an equivalent one on our vessels entering their ports, they would gain and we should lose.

Several methods are adopted to prove this opinion. The observation that we have a tonnage duty on our own vessels, and that Great Britain has none, is repeated by way of objection against this as well as against the proposed adjustment contained in the 12th article. The same reply already given might be sufficient in this place.

But [is it true] that British ships entering their own ports in Europe are wholly free from a tonnage duty? the contrary is the fact; since it is understood, that they pay a tonnage duty for the support of light-houses, and some other institutions, connected with their navigation, which [in all their ports*] exceeds the tonnage duty of six cents per ton, that we levy on the entry of our own vessels employed in foreign trade. But Great Britain (it is alleged) will not only impose in virtue of this reserved right, fifty cents per ton on our vessels entering her ports, but in every port except that of London, she will furthermore exact one shilling and ninepence sterling, or thirty-nine cents per ton, for light-money and Trinity-dues more than is paid by her own vessels; this, added to the difference before stated, would have, it is said, a very discouraging effect upon our navigation. Our tonnage duty is a tax not divided and appropriated, like the light-money, or Trinity-dues, in Great Britain, to specific, and particular objects—but when levied, goes into the treasury with the duty of impost, and stands appropriated to the various objects to which that duty is appropriated—among those objects is the support of light-houses—it is not the object to which the tax is applied that gives a denomination; whether it goes to support the civil list, or to pay annuities, or to maintain light-houses, or to support hospitals, it is equally a tonnage duty. A tonnage duty then of a certain amount, is now paid by American vessels entering the ports of Great Britain. This duty is not uniform, being less in London than in the other ports, and, in some in-

* Unless London be an exception.

stances, less than the tonnage duty paid by British ships entering our ports. The object of this clause (8th of the 15th article) is to equalize the alien tonnage duties of the parties. Hence the reservation of a right to the British government, to impose on our vessels entering their ports in Europe, a tonnage duty equal to that which shall be payable by British vessels in our ports. It would be against the manifest views of the parties as well as against the explicit terms of the article, to impose a tonnage duty (whether for light-money, Trinity-dues, or any other purpose) which should exceed that which shall be payable by British vessels in our ports.

The right reserved is expressly to impose on our vessels an equal, not a greater tonnage duty than we shall impose on their vessels. This objection, therefore, must be abandoned.

But again, it is urged, that our navigation, should it weather Scylla, must perish on Charybdis: for we are gravely told by Cato, that under the right reserved to the British government to impose such duty as may be sufficient to countervail, or, which is equivalent, to balance the difference of duty payable on the importation into our ports of Asiatic or European goods by American or by British vessels, our ships will be thrown out of the trade with the British European dominions; because under this right, the British government will impose a duty on our productions carried to their ports in our own ships, equal to the whole duty payable on the goods and merchandises imported into our ports by British ships; and as the goods and merchandises which we receive from them exceed in value those that they receive from us by one-third, and as the duty to be countervailed is at least ten per cent. ad valorem on the goods received from them, the consequence will be, that the countervailing duty must amount to fifteen per cent. on the value of all our productions carried in our own ships to the British ports in Europe, while the same will be free in British ships. A more extravagant construction,* or an argument more inaccurately formed, can scarcely be imagined.

[* If I mistake not, the assertion of Cato, as to the *whole duty*, has been retracted; but the residue of his error on this point remains unrecalled.]

The countervailing right is not applicable to the whole duty payable on goods and merchandises imported into our ports in British ships, but expressly confined to the difference of duty now payable on the same when imported by American or by British vessels. This difference is one-tenth part of the duty upon all European goods, that is to say, these goods pay one-tenth part more duty when imported in British vessels than is paid on the same when imported in an American vessel; in all cases, therefore, where our impost is ten per cent. ad valorem, the difference of duty to be countervailed amounts to only one per cent. on the value of the goods, instead of ten per cent. as is alleged by Cato; in the instance of teas imported from Europe the difference is greater: again it is not an aggregate sum, that is to be apportioned under this countervailing right, for this sum would be liable to constant variation, according to the quantity and species of goods imported into our ports from time to time by British vessels; and besides, the British government possess no means whereby the amount thereof could be ascertained.

Cato feels and admits the force of these remarks as decisive against an average duty, without perceiving that they possess equal strength against his project of countervailing the whole duty paid on the importation of goods and merchandises into our ports by British vessels; for the same variation in the amount, and the same want of the means to ascertain it, will operate in both cases. The reasons which he himself employs to prove that an average duty cannot be ascertained, equally show the impracticability of the method which he considers as the one that will be employed in the execution of the countervailing right reserved to the British government. It has before been stated, that the natural as well as the equitable mode of executing this power will be, to impose a duty on the goods imported by us from their European ports exactly the same as makes the difference of duty on the importation thereof into our ports by American or by British vessels.

Admitting that the execution of the countervailing right reserved to Great Britain will do no more than place the navigation of the parties on an equal footing in their mutual intercourse,

still we are told that for this, likewise, the treaty is blamable, because even equality will be such an advantage to our rival, that we shall be unable to maintain the competition.

This objection brings with it a quality rarely to be discovered in the opinions of the cavillers against the treaty. Their usual error is a false and magnified estimate of the comparative resources, strength and importance of our country; in this instance, shifting their ground, they fall into the opposite extreme, and contend for our inferiority in a branch of business in the prosecution of which, we are unquestionably able to meet a fair competition with any nation.

With what propriety could we have proposed or expected an adjustment of our intercourse by which our vessels should have been placed on a better footing than those of the other party? As the trade was mutually beneficial, why could we, more than Great Britain, ask for an arrangement that should subject our rival to comparatively heavier burdens? Does any considerate man believe, that it would have been proper for us to ask, or that there is the least probability that Great Britain would have acceded to, an arrangement on the subject of our mutual navigation, that should have secured to us advantages denied to them? To place the navigation of the parties on an equal footing, was all that could be rationally expected by either—and so far from such a settlement being injurious to us, the contrary has long been the opinion both here and in Great Britain. If it is true, that we are unable to maintain a competition with the British navigation, how are we to account for the jealousy [that is understood] to have shown itself on their part on this subject.

But the fact is otherwise—British ships cannot be built and equipped as cheap as American ships, nor are they victualled and manned* on as good terms. Our country abounds with excellent materials for ship-building. Great Britain is in a great measure dependent upon other countries for a supply of them. The materials for the construction of ships are much cheaper in America

* [In the comparison in this particular, we must combine the *number* of hands with the terms of compensation according to which the vessels of the two countries are navigated.]

than in Great Britain; and intelligent characters in Great Britain as well as in America have affirmed, that an American merchant ship of any given burden, can be built and equipped for sea one-third cheaper than a British, Dutch, or French ship of equal goodness. Mr. Coxe informs us, that the cost of an American ship, built of our live oak and cedar, is from 36 to 38 dollars per ton, completely finished; while an oak ship in the cheapest part of England, France, or Holland, fitted in the same manner, will cost from 55 to 60 dollars per ton. The capital employed on the American merchantmen is therefore one-third less on any given amount of tonnage than that employed in the same amount of British tonnage; or the money requisite to build and equip for sea two British merchant ships, will be sufficient to build and equip for sea three American merchant ships of the same burden and of equal goodness. It is not only the difference in the first cost, but to this should be added the difference of interest and insurance, the annual amount whereof is ascertained by the value of the ships.

If we add to this, the comparative advantages that we possess in victualling and manning our vessels, independent of the acknowledged and distinguished skill and enterprise of our seamen, it may be safely affirmed, that no American who knows the character of his countrymen, and who is not ignorant of our peculiar resources for ship-building, will doubt our superiority in an equal and fair competion with any other nation.

It is further alleged, that the treaty wants reciprocity, inasmuch as the whole territory of the United States is laid open to the British navigation and commerce, while in return, the British territories, *in Europe only*, are open to us. The short answer to this allegation is, that it is not true. All the British territories in Europe are laid open to us; all their territories in Asia are also opened to us; the treaty likewise opened all their territories in the West Indies. The article relative to this branch of trade, as has already been observed, is excepted from the ratification of the treaty, and made the subject of future negotiation. The British territories on our continent, that of the Hud-

son's Bay company excepted, are also opened to us in like manner as ours are opened to them. The intercourse is confined on both sides to the interior communications, the inhabitants of those colonies being equally destitute of a right to resort, by sea, with their ships to our ports and harbors, as we are of the right to resort, by sea, with our ships to their ports and harbors.

The territory of the Hudson's Bay company, the island of Newfoundland and the establishments on the coast of Africa, are the only British dominions to which the treaty, in its original form does not give a right of intercourse and trade.

The settlement in the Bay of Honduras is on Spanish lands, and the right of precedence is conceded for specified objects, beyond which the Spanish government are vigilant to restrain the settlers.

Spain may possibly be induced to allow us a right in common with Great Britain to cut mahogany and dye-woods in this region; but Great Britain cannot, consistently with her convention with Spain, share with us the privilege that she enjoys.

Newfoundland is a mere establishment for the British fisheries. The African trade has been, and might hereafter be pursued, if our humanity and the force of public opinion did not impede it, without procuring a right to resort to the British ports in that quarter: and in respect to the unsettled territory of the Hudson's Bay company, about which so much has been noticed and written, it is of no sort of importance, except in a small Indian trade that employs two or three annual ships which arrive there in August, and escape in September; besides, that this trade belongs to a company who possess a right to the exclusive enjoyment of it even against their fellow-citizens. It is finally alleged that the treaty will bind up and restrain our government from making more specific and beneficial treaties of commerce with other nations.

Those who urge this objection, have generally placed great reliance on another objection, which asserts that the treaty with Great Britain violates the Constitution, because it amounts to a regulation of commerce, the power to regulate which is vested

in Congress and not in the executive. Yet these very characters, in the next breath, maintain that the treaty is bad, because it precludes our executive government (for no other power can make treaties) from making more minute and beneficial commercial treaties with other nations. If these observations can be reconciled, it must be thus: the Constitution does not authorize the executive, with the aid of the senate, to make a commercial treaty with Great Britain, having vested in Congress the power to regulate the trade between us and that nation; but it allows the executive to make commercial treaties with any other nation, which may establish the most material and minute commercial and revenue laws, without affecting the power vested in Congress to regulate trade. That we may have characters among us sufficiently intemperate to wish that such was the Constitution, I am not prepared to deny;—but that such a construction can be made out, yet remains to be proved.

The objection, as usual, is made in a loose and inaccurate manner; literally interpreted, we should infer that the treaty contained an article, whereby we had agreed with Great Britain, that we would not form any future treaties of commerce with any nation; but no such stipulation exists.

Is it meant by the objection to be alleged, that we can form no commercial treaty, whereby, for an advantage yielded on our part, we may acquire a privilege in return, unless we yield the same advantage to Great Britain gratuitously and without receiving from her the equivalent?

Admitting the truth of this objection, it might be replied: So on the other hand, Great Britain can form no commercial treaty, whereby, for an advantage yielded on her part, she may acquire some privilege in return, unless she yields the same advantage to us gratuitously and without receiving from us the equivalent; and as Great Britain, whose commercial relations are equally extensive with ours, and whose capital far exceeds ours, is equally restrained on this point, our chance of gain would be fully equal to our chance of loss.

But the allegation is not generally true, and the objection,

when examined, will be found to be of little weight, even with those who may imagine that nations do sometimes make good bargains by the purchase of privileges and exemptions in their foreign trade. The case that has been chosen to enforce the objection, shall be employed to invalidate it.

Admit that the treaty with Great Britain is in operation—that the oil and provision merchants of the United States, and the wine and brandy merchants of France are desirous of a treaty between the two countries, whereby those commodities shall be received from each other on low duties or freely—admit further, that the governments of the two nations are disposed to make such a treaty (this is the case again put by the opposers of the treaty as impracticable), what will restrain the conclusion of this treaty? The disadvantage that will arise from our treaty with Great Britain? No, for Britain produces neither wines, nor brandy made from wines, with which she could supply us; she therefore could gain nothing, nor should we lose any thing by the conclusion of such a treaty. All that will be requisite, therefore, in the formation of such treaties, will be to choose for the purpose such articles of the growth, manufacture, or produce of any country with whom we desire to treat, as are not common to it and the British dominions, and any skilful merchant will quickly make the selection. Hence it appears that the objection is not well founded in point of fact.

But though it may be practicable, will it be politic in us to conclude no commercial treaties of this character with any nation? If we resort to precedents as guides, we shall discover few, the history of which would encourage us. Indeed they are a description of conventions not often formed between nations.

They are of difficult adjustment, and necessarily increase the provisions of the commercial code, sufficiently intricate, when only one rule prevails in respect to all nations. Besides, however perfect may be the right of nations in this respect, yet, when the productions of one nation are received at lower duties than the like productions of another, the discrimination will scarcely fail to awaken desires and to produce dissatisfaction from their disappointment.

Again, unless we are prepared, at the expense of the whole, to procure advantages or privileges for a part of the community, we shall doubt the policy of such stipulations. Between two manufacturing nations, in each of which the manufactures have attained to great perfection, a tariff of duties may be established by treaties, in the payment of which the manufactures of the two countries might be freely exchanged and mutually confirmed; such was the commercial treaty between France and Great Britain in the year 1786. But the subject was so intricate and involved such a variety of apparently independent circumstances, such as the price of provisions, the amount and the manner of levying of the taxes, and the price of the raw materials employed in their respective manufactures, that neither part felt entire confidence in the equity and reciprocity of the treaty: and with all the skill in negotiation, that France in a superior degree has been supposed to have possessed, the opinion of that nation has finally been, that the treaty was burdensome and disadvantageous to them.

We have another specimen of this species of treaty in a short convention between England and Portugal, concluded in 1703—the object was to procure a favorable market for dissimilar commodities, and such as were not the common production of the two countries. But this treaty, which has been so much applauded, is essentially defective in point of reciprocity. England agrees to admit the wine of Portugal on payment of two thirds of the duty that shall be payable on French wines; and in return, Portugal agrees not to prohibit the English woollens. She does not agree to receive them exclusively of the woollens of other countries, nor to admit them on payment of lower duties. The advantage, therefore, is manifestly on the side of Portugal. By the treaty of commerce between France and Great Britain, concluded in 1786, it was agreed, that the wines of France imported into Great Britain should pay no higher duties than those which the wines of Portugal then paid. The consequence must have been a reduction, without compensation or equivalent from Portugal, of the existing duties on the wines of that country brought into Great Britain, equal to one third of the amount of

such duties. This is an instance of inconvenience and loss, resulting from the species of treaties, which it is alleged as an objection to the treaty concluded between us and Great Britain, that we are prevented by it from making with other nations.

'A small compact nation, likewise, who excel in some one species of manufacture, that is established throughout their territory, and in the conducting and success whereof there is a common interest, may find it useful to procure the exclusive supply of some foreign market: provided, in this as in all other bargains, the compensation shall not be too high. But in a nation like ours, composed of different States, varying in climate, productions, manufactures, and commercial pursuits, it will be more difficult to enter into treaties of this kind. Should Great Britain, for example, be inclined to admit our fish-oils freely, or on payment of low duties, on condition that we would receive their woollens or hardware freely, or on payment of low duties —would the middle and southern States be satisfied with such a treaty?—would they agree to a tax on their estates sufficient to supply the deficiency in the revenue arising from the relinquishment of the impost on British woollens or hardware? Would it not be said, that such a tax was a bounty out of the common treasury, on a particular branch of business pursued alone by a portion of the citizens of a single State in the Union? Instances might be multiplied in the illustration of this subject; but they will readily occur to every man who will pursue a little detail in his reflections. We have once made an experiment of this kind—its fate should serve as a caution to us in future. By the eleventh and twelfth articles of our treaty with France, it was agreed, that France should never impose any duty on the molasses that we should import from the French West Indies; and in compensation of this exemption, that we should never impose any duty on the exportation of any kind of merchandise by Frenchmen, from our territories, for the use of the French West Indies. These articles produced much dissatisfaction in Congress: it was said to be a benefit that would enure to the use and advantage of only a part, but which must be compensated by the whole. Those arguments which will show themselves in

future, should similar conventions be formed, were displayed on this occasion. The treaty was ratified, Congress applied to the king of France to consent to annul these articles—this request was granted—and the articles were, by the several acts of the parties, annulled.

Not only the few instances of the existence of these treaties among the nations, added to the peculiar difficulties which we must meet in their formation, should lead us to doubt their utility, but also the opinion of our own country, which, if explicit on any point, has been repeatedly so in the condemnation of this species of national compact.

The introductory article of our commercial treaty with France, asserts, that the parties willing to fix in an equitable and permanent manner, the rules which ought to be followed relative to their correspondence and commerce, "have judged that the said end could not be better obtained, than by taking for the basis of their agreement the most perfect equality and reciprocity, and by carefully avoiding all those burdensome preferences which are usually sources of debate, embarrassment and discontent."

The same language is employed in our subsequent treaties with Holland and with Sweden; the public voice is unequivocal on this subject.

On the whole, the more closely this question is examined, the more doubtful will the policy appear, of our entering into treaties of this description. We shall have to encounter not only the intrinsic difficulties that always attend a fair and precise adjustment of the equivalents, together with the national discontents that proceed from errors on this point; but moreover a still greater embarrassment from the circumstances that our great staple exports are not the common productions of the whole Union, but different articles are peculiar to different parts thereof. If, notwithstanding, our government shall discover an instance in which, consistent with the common interest and sound policy, such a treaty might be desirable, we have scope sufficient to form it without incurring loss or disadvantage by the operation of our treaty with Great Britain.

CAMILLUS.

NO. XXIX.

1795.

The sixteenth article is entirely conformable to the usage and custom of nations. The exchange of consuls had already taken place between us and Great Britain; and their functions and privileges being left to the definition of the law of nations, we shall be exempt from those unpleasant controversies that too often arise from special conventions, which enlarge the consular privileges, power, and jurisdiction.

The agreement that either party may punish, dismiss, or send back a consul for illegal or improper conduct, is calculated to prevent national misunderstandings, and to secure a respectful deportment in the consular corps. I have not observed that this article has been disapproved of from any quarter.

The seventeenth article which respects the capture and detention of the vessels of the parties on just suspicion of having on board enemy's property, or contraband of war, has been the object of intemperate censure—with how much justice it shall be the business of this paper to examine.

The principal complaint, is not, that the article exposed our own property to loss by capture, for this is not the case, but that it does not protect enemy's property on board our vessels. The defence of the article will rest upon the proofs which shall be exhibited, that it is in conformity with, and supported by, the clear and acknowledged law of nations—that law which pronounces that enemy's goods on the high seas are liable to capture, and as a necessary mean to this end, that neutral ships are there liable to examination or search.

The law of nature (as heretofore observed) applicable to individuals in their independent or unsocial state, is what, when applied to collections of individuals in society, constitutes the natural or necessary law of nations. An individual in a state of nature, for reparation of injuries, or in defence of his person and property, has a right to seize the property of his enemy, and to destroy his person.

Nations always succeed to the rights that the individuals who composed them enjoyed in a state of nature: and hence it is that by the law of nations, from the earliest annals of society, the goods or property of one enemy has been considered as liable to be seized and applied to the use of another. This right must be so used as not to injure the rights of others: subject to this limitation, it is perfect, and an interruption of it by another is an injury. As in a contest between two individuals in a state of nature, no third has a right, without becoming a party in the controversy, to protect the property, or defend the person of either of the parties; so in a war between two nations no third nation can act out of its own jurisdiction, consistent with the duties of neutrality; or, without becoming a party in the war, protect the property of, or defend either of the parties. Though nations are, in respect to each other, like individuals in a state of nature, the resemblance is not in every particular perfect. Individuals in a state of nature have not only the inferior dominion or private ownership of property, but the entire and perfect dominion over it. In society the latter right belongs exclusively to the nation, while the former belongs to the several members that compose it. Immovable things, such as lands, which are denominated the territory of a nation, are the immediate and special objects of this perfect dominion or paramount property. Movable things are the proper objects of inferior dominion or private ownership, and are no otherwise the objects of the national or paramount property than as they happen to be within its territorial limits. The perfect dominion, or jurisdiction of a nation, in respect to property, extends over, and is bounded by, the lands thereof and the waters appurtenant to the same.

As soon, therefore, as movable things pass out of these limits, they cease to be under the dominion or jurisdiction of the nation, the private property of whose members they may be.

This private property, in movable things, may be enjoyed within the territory of a nation, by those who are not members thereof. Hence in a war between two nations, a member of one of which owns movables within the territory of a third or neutral nation, such movables or property are not liable to seizure by

reason of the war; because, being within and under the exclusive jurisdiction of a third nation, it would be an injury to the right of such nation to go there and seize the same. So long as such movables remain within a foreign territory, they are objects of its dominion and protection; but as soon as they are carried out of the same, they cease to be any longer under its jurisdiction or protection.

In a war between two nations, all the members of each are enemies to the other, and all the property of the several members, as well as the strictly national property, is liable to seizure. In general the character of the owner, whether enemy or friend, decides whether property is liable to capture by reason of war; but the validity of the capture depends not only on the goods being enemy's property, but likewise on the fact that the place of capture is one in which the right may be exercised without injury to the rights of a neutral nation. Hence the property of an enemy is liable to capture only within the respective territories or jurisdiction of the belligerent nations, or in a place not within the territory or jurisdiction of any nation. In either of these places the right may be exercised without injury to the rights of neutral nations. The limitation of this right, so far as respects enemy's property found within the territory of one of the parties on the breaking out of war, has before been discussed and placed, I flatter myself, on solid principles.

The main ocean not being within the territory, or subject to the exclusive dominion of any nation, is a place, where enemy goods may lawfully be captured. An impediment by any third nation to the exercise of the right of capture on the ocean by either of the belligerent parties, would be an injury.

As the goods of an enemy, within the territory of a neutral state, are under the protection thereof, the law of nations, for the reasons that have been stated, will not permit us to take them: in like manner, we have no right to take them if they are on board a ship, whilst the ship is in a neutral port, whether the ship itself is a neutral one, or belongs to an enemy, because the port is a part of the territory. When the goods of an enemy are on board the ship of an enemy, and the ship is in the main

ocean, there is no doubt of our right to capture both the goods and the ship, because they are then in a place which is not the territory of any nation. But when the goods of an enemy are on board a neutral ship, and the ship is in the main ocean, though we have a right to take the goods, we have no right to take the ship, or to detain her any longer than is necessary to obtain possession of the goods—for the ocean itself is no territory—and neutral ships, as they are movable goods, can not be parts of the neutral territory; and consequently are no more under the protection of the neutral state, than the same goods would be, if they were passing through an unoccupied country in neutral carriages, or on neutral horses.

A neutral ship (says Rutherford in his institutes, whose reasoning on this question I adopt) may indeed be called a *neutral place;* but when we call it so, the word *place* does not mean territory, it only means the thing in which the goods are contained. Though the goods of the enemy had been on board a ship belonging to the enemy, we might have said, in the same sense, that they were in a neutral place, if they had been locked up there in a neutral chest. But no one would imagine, that such a neutral place, as a chest, can be considered as a part of the territory of the neutral state, or that it would protect the goods. Notwithstanding, a neutral chest is as much a neutral place as a neutral ship.

A ship, though a movable thing, is under the jurisdiction of a nation whilst it continues in one of its ports—but as soon as it is out at sea, only the private ownership, or inferior dominion, of the ship remains, and it ceases to be under the dominion or jurisdiction of the nation. The case will be the same, if, instead of supposing the ship to be the property of a merchant, we suppose it to be the property of the nation.

For though we cannot well call the property which *the nation* has in such a ship by the name of private ownership; yet, when the ship comes into the main ocean, the jurisdiction or paramount property ceases, and the right that remains is an inferior kind of property, which has the nature of private ownership. If the jurisdiction, which a neutral state has over the ships of its mem-

bers, or even over its own ships, ceases when the ships are out at sea; the goods of an enemy, that are on board such ships, cannot be under the protection of the nation, in the same manner as if the ships had been in one of its ports, or as if the goods had been on its land.*

Notwithstanding a neutral nation, when its ship is in the main ocean, has no jurisdiction over the ship itself, as if it was a part of its territory, yet the nation, or some of its members, which is the same thing, will continue to have the inferior sort of property, or ownership in it. This species of property will protect the ship from capture, though the enemy's goods on board her may lawfully be taken.

But here a difficulty occurs. This inferior kind of property, called private ownership, to distinguish it from the jurisdiction over things, is an exclusive right; those who have such ownership in things, whether private or public persons, have a right to exclude all others from making use of such things; and by this means, the rights of others are often hindered from taking effect.

Wild beasts, birds, and fishes, are, till they are catched, in common to all mankind; and I, in common with others, have a right to take them, and thereby to make them my own. But I cannot hunt, or shoot, or fish, without perhaps sometimes using the soil or water of another man; and as I have no right to use these without his consent, he may justly hinder me from doing any of these acts, as far as his right of property extends. Thus by private ownership I am prevented from taking such things, as I should otherwise have a right to take, if they did not happen to be in such places as he had an exclusive right to. In like manner, though I have a right to take the goods of my enemy, when they are out at sea, yet may not the effect of this right be prevented by the inferior property or ownership, which a neutral nation, or its members, have in the ship in which the goods are?

* [The jurisdiction here spoken of is relative to property, and altogether distinct from what is termed personal jurisdiction, which respects the relations between the society and its members. This latter species of jurisdiction is not confined to the territorial limits of a nation.]

If the law of nations is nothing but the law of nature applied to the collective persons of civil societies, instead of saying that the law of nations has decided otherwise, we should disclose a natural reason why it should determine otherwise. When I have merely a right to acquire property in a thing that is common to all mankind, but cannot do it without the use of what is already the property of some other man, this man neither does me an injury, nor encourages or protects others who have injured me, by excluding me from the use of what belongs to him. But when we have a right in war, upon account of the damage which the enemy has done us, to take goods of the enemy, and these are in a neutral ship; if the neutral state, though it has property in the ship, should make use of its right of property to protect the goods against us, this protection makes it an accessory to the injury, which is the foundation of the claim upon the enemy to obtain reparation of damages, and consequently is inconsistent with the notion of neutrality.

But whilst this answer removes one difficulty, it bring another. If a neutral nation makes itself accessory to the damages done by the enemy, by protecting such enemy's goods as she has a right to take for reparation of damages, when these goods are out at sea in one of its ships; why might not the same nation, without becoming in like manner an accessory, protect the same goods when the ship is in one of its ports, or when the goods are on land within its territory? A law of nations, which is natural as to the matter of it, and positive only as to the objects of it, will furnish an answer to this question.

Every state has, by universal acknowledgment and consent, by the law of nations, an exclusive jurisdiction over its own territory. As long, therefore, as a state keeps within its own territory, and exercises its jurisdiction there, the protection in question is not a violation of our rights—but when its ships are in the main ocean; as they are then in a place out of its territory, where, by the law of nations, it has no jurisdiction, this law will allow us to take notice of the protection, which it gives to the goods of an enemy, and to consider it as an accessory to the damages done by the enemy, if it gives them protection.

In respect to the right of examination or search, if the end is lawful, and the examination or search a necessary mean to attain this end, the inference is inevitable, that the examination or search is likewise lawful.

If the question, whether enemy goods are seizable on board a neutral ship, were really doubtful; yet the right to search neutral ships must be admitted for another reason. All agree that arms, ammunition and other contraband articles, may not be carried to an enemy by a neutral power—without searching vessels at sea, such supply could not be prevented. The right to search, therefore, results, likewise, from the right to seize contraband goods. Again, the state of war authorizes the capture of enemy's ships and goods; but on the main ocean, which is the great highway where the ships and goods of all nations pass, how are the ships and goods of an enemy to be distinguished from those of a friend? No other way than by examination and search. Hence then the right of search is deducible from the general right to capture the ships and goods of an enemy.

It would undoubtedly disembarrass the commerce of neutral nations were passports and ships' papers received, in all cases, as conclusive evidence of the quality and property of the cargo. And did treaties, in fact, effectually secure an exemption from rude and detrimental inquisitions upon the ocean, they would become objects of inestimable worth to the neutral powers. But, notwithstanding the existence of stipulations in our other treaties [which aim at giving some force to similar credentials], can it be said, that our ships have been visited with less ceremony by one party than by the other? And may not the experience of other nations, as well as that of our own, be appealed to, in proof of the opinion, that these stipulations, however exact and positive, are too little regarded by that class of men, to restrain and govern whose conduct they are instituted?

The right of search ought to be used with moderation, and with as little inconvenience as possible to the rights of nations not engaged in the war. And the law of nations, on the other hand, requires the utmost good faith on the part of the neutral powers. They are bound not to conceal the property of the

enemy, but on the contrary, to disclose it when examination shall be made; in confidence of this impartiality, the law of nations obliges the powers at war to give credit to the certificates, bills of lading and other instruments of ownership, produced by the masters of neutral ships, unless any fraud appear in them, or *there be good reason for suspecting their validity.* The right of search is [always] at the peril of those who exercise it; the right, notwithstanding, [must be acknowledged] to be indubitable.

The reasoning employed to prove that all neutral ships, on the main ocean, are liable to search, and enemy goods on board them to capture, is supported by the ablest writers on public law, and their decision is believed to be unanimously in its favor.

The Italian states were the first among modern nations, who cultivated the interests of commerce, and before the passage of the Cape of Good Hope, Venice and Genoa distributed the manufactures of Asia throughout Europe. They, therefore, first defined the rights of navigation. Their maritime regulations are collected in a work called "Consolato del Mare;" I do not possess the collection, but find the following quotation from it in Grotius.*

"If both the ship and freight belong to the enemy, then, without dispute, they become lawful prize to the captor; but if the ship belong to those that be at peace with us, and the cargo be the enemy's, they may be forced by the powers at war, to put into any of their ports, and unlade; but yet the master must be *satisfied for the freight of them.*"

Grotius, that learned and persecuted friend of liberty, whose life and great talents were dedicated to the service of mankind, and who displayed so much ability and learning in defending the freedom of the seas and of commerce, is clearly of opinion, that enemy goods are not protected by neutral bottoms: he even goes farther, and allows that *such property* occasions great presumption that the vessel is, likewise, enemy property.† Bynker-

* Grotius Book 3, chap. 1, sect 5, Note.

† Grotius. Book 3, chap. 1, sect. 8—Book 3, chap. 6, sect. 6.

shoek is of the same opinion.* Puffendorf† and Heinecius‡ agree in this law; and Vattel, who is the latest writer, is explicit in his opinion; "without searching neutral ships at sea," says he, "the commerce of contraband goods cannot be prevented—there is then a right of searching. Some powerful nations have, at different times, refused to submit to this. At present a neutral ship refusing to be searched, would, from that proceeding alone, be condemned as lawful prize." "Effects belonging to an enemy, found on board a neutral ship, are seizable by the rights of war; but by the law of nature, the master is to be paid his freight, and not to suffer by the seizure. The effects of neutrals, found on board an enemy ship, are to be restored to the owners, against whom there is no right of confiscation."

Other authors of respectability might be quoted; but those already named will be acknowledged as the ablest, and their authority the most decisive of any that can be cited—so strong, clear and uninterrupted, are the authorities of the writers on public law in relation to these points, that the advocates of an opposite rule, may be challenged to produce a single authority of approved respectability in support of their opinion.§

CAMILLUS.

NO. XXX.

1795.

Admitting that it was the law of nations that enemy's goods might be seized in neutral ships, it is alleged by Cato and other writers, who have appeared on the same side, that the treaties which have been formed between nations have annulled this law, and established another in its stead, equally extensive and binding on the whole civilized world.

* Bynkershoek, Quest. Jur. Pub. lib. i, cap. 13 and 14.

† Puffendorf.

‡ Heineeius, de Navibus cap. 2, sect. 114, 115, 116.

§ This subject will be resumed and pursued under different aspects in another number.

In discussing this allegation, we should remember, that all nations are in a state of equality, and independent of each other. No law, other than the necessary or natural law of nations, is binding on any nation without its consent, expressly or tacitly given. A law among nations cannot, like a civil or municipal law, be annulled, or enacted by a majority, or any portion short of the whole. By agreement between two or more nations, the operation of a law already in existence, may be suspended so far as respects themselves; but such agreement works no change of such law, in relation to the rights or duties of other nations. The same is true of any rule of action, established by convention between two nations; such rule is obligatory on the parties that form the contract, but is wholly without effect and nugatory in respect to all other nations. Unless then all nations have concurred in the design to annul this law, it must still exist; and treaties containing opposite stipulations, can be considered in no other light, than as exceptions to the same, in which certain nations have seen it their interest to agree.

Though one nation may have agreed with another to suspend the operation of this law, and to substitute the rule that free ships make free goods, and enemy ships enemy goods, there may have been some peculiar reason that induced the parties to form this convention with each other, that would not apply in respect to any other nation.

A nation may advance its interest perhaps by forming such a treaty, with one nation, and injure it by forming it with another—because a nation has, in some instances, or for a limited time, formed stipulations of this sort, it cannot from thence be inferred, that it has thereby, in any sense, expressed its consent to a total repeal of a law, the operation of which it has agreed to suspend only for a limited time, and in respect to a particular nation. Commercial treaties, in which we discover these stipulations, though not always, are commonly limited in their duration. This limitation is a strong argument against the doctrine which these treaties are cited to establish. For so many years, say the parties, we will suspend the operation of the law. When the treaty expires by its proper limitation, or is dissolved by war, the rule

of the treaty ceases, and the law is again in force between the parties, and prescribes to them, in common with other nations, their rights and duties in this respect.

The law of nations, that authorizes the capture of enemy goods in neutral ships, requires the restoration of neutral goods captured in enemy ships: the treaties, which stipulate that free ships make free goods, stipulate also that enemy ships make enemy goods. I have discovered no instance of the former stipulation, that has not been accompanied by the latter: though I have found instances of the latter stipulation unaccompanied by the former. This is the case in the treaty of peace, commerce and alliance between Spain and England, concluded at Madrid, in 1667. Those, therefore, who contend that the law of nations has been repealed in one instance, must also insist that it has been repealed in the other. If the number of stipulations is to be received as evidence, the proof is stronger of a repeal in the latter than in the former case. But will any one seriously maintain, that a nation would have a right to confiscate the goods of a neutral power found on board an enemy ship, without an express stipulation on the part of such neutral state consenting to the same? Would England or Spain, for example, have a right to confiscate American property captured in a French ship? Would America, if at war, have a right to confiscate the neutral property of Spain, Portugal, Denmark, or Russia, found on board an enemy ship? Has any nation ever confiscated property under this circumstance? If not, the inference is clear, that these stipulations are exclusively relative to the parties who form them, and that the rights of other states remain under the protection of the law of nations.

But according to Cato, this reasoning may be just, yet inapplicable; for he maintains that *all nations* have consented to the establishment of this conventional law. "As far back as 150 years," says this writer, "and ever since, I find that the commercial nations have stipulated in their treaties, that free ships shall make free goods, that full credit shall be given to ships' papers, and that armed vessels shall not come within cannon shot of a neutral ship, but send their boats on board with only

two or three men at most, to examine papers, but *not to search*, and that the treaties (by which is understood all the treaties) for 150 years back, relative to this object, are drawn in the words of the treaty between the United States and France."

Struck with the fulness of this assertion, I have carefully examined such collection of treaties, as I have been able to procure, and going back to the year 1645, I have given a patient search to all the public conventions between Great Britain and the several powers of Europe since that period. I find, that since that epoch, Great Britain has concluded commercial treaties with Spain, Portugal, France, Holland, Dantzic, Denmark, Sweden, and Russia.

In the treaties with Holland and with France, she has agreed to the stipulation, that free ships shall make free goods, and enemy ships, enemy goods. In *Chalmers's* collection of treaties, a similar stipulation is contained in the 23d article of the treaty of alliance, concluded in 1564, between Oliver Cromwell and the king of Portugal; but in other collections, in which that treaty is found, it does not contain a stipulation that free ships shall make free goods; and it has been denied, from a reputable quarter on the part of Great Britain, that she has ever acceded to this principle, except in the instances of her treaties with Holland and France; neither of which exist any longer, the former having expired long since, and the latter being dissolved by the present war. Her treaties with Spain, Dantzic, Denmark, Sweden, and Russia, do neither of them contain this stipulation. On the contrary, the 12th article of the treaty with Sweden, and the 20th of the treaty with Denmark, each of which is now in force, and has been so for more than a century, as likewise the 14th article of the treaty with Dantzic, declares, that "lest the enemy's goods and merchandise should be concealed under the disguise of the goods of friends, it is stipulated, that all ships shall be furnished with passports and certificates, by which it shall be manifest to whom the articles, composing the cargoes, belong:" and the two first of these treaties, moreover, declare it "to be injurious to protect the property of enemies," and establish special guards to prevent the same.

In relation to the full credit to be given to ships' papers, and the manner of boarding neutral vessels,—in the treaties with Spain, France, and Holland, it is stipulated, that full faith shall be given to the passports, and that the boarding shall be by two or three men only. But the treaties with Portugal and Russia are destitute of any stipulation on this subject, except that in the latter it is agreed,* that "the searching of merchant ships shall be as favorable as the reason of the war can possibly admit, toward the most favored neutral nation, observing, as near as may be, the principles of the law of nations that are generally acknowledged."† In the treaties with Dantzic, Denmark, and Sweden, passports are required for the purpose of distinguishing, according to the solemnities of those treaties, the enemy property on board the ships of the parties; and it is stipulated, that credit shall be given to such passports, except in cases of just and urgent cause of suspicion, when, say these treaties, the ship ought to be searched; an exception, that fully recognizes the right to search, essentially does away the security intended by the passports. But neither of these treaties contain any regulation relative to the manner of boarding neutral vessels.

This research, though made with care, may have been imperfect; the result thereof is, that there are only two, possibly three, of these eight nations, with whom Great Britain has ever agreed to the stipulation, that free ships shall make free goods; only three of them with whom she has stipulated, that full credit shall be given to passports or ships' papers, or with whom the manner of boarding is settled. Instead, therefore, of that uniformity and universality in the stipulations in the commercial treaties, concluded within the last 150 years, so confidently asserted by Cato, we see that in five instances out of eight, of treaties concluded between Great Britain and the principal powers of Europe, within that term, they have on each of these points, given their sanction to a law directly in opposition to the assertion of this adventurous writer.

Yet, says Cato, "the principles of the armed neutrality, by

* Treaty of 1776, article 10. † Treaty with Dantzic of 1706, article 20.

the general consent of the great community of the civilized world, changed the law of nations." It is a singular logic that proves the agreement of nations by their disagreement, and their consent to a principle, by their drawing forth their fleet to dispute it. The armed neutrality, with those who understand its history, will not be relied on by way of proving a change in the law of nations, brought about by universal consent.

It will not be denied that this league, which was aimed principally against Great Britain, failed to accomplish its purpose, and that it expired with the American war. Nothing has been heard of it during the present war; and it is notorious, that Russia, and Holland before its conquest, were under agreements incompatible with the views of that association. The northern powers of Europe under the countenance of France, united to support the principles of the armed neutrality; but the league did not include all the neutral powers; and of the powers engaged in the war, at that period, Spain consented to observe the principles contended for by the confederacy, on condition that Great Britain would agree to them, who, so far from agreeing, openly resisted them.

On the same principle, by which it is contended that this association introduced a new law of nations, might the armed leagues between certain nations to prohibit all commerce whatever with an enemy, be appealed to in proof of an alteration of the law of nations in this respect. England and Holland entered into such a league against France, in the year 1689; and other instances are mentioned by Grotius; yet no one has ever imagined that thereby any change was wrought in the law of nations.

The objection that has arisen from the dissimilarity between this article and those relative to the same subject in our other treaties, is equally defective with those already considered. The objection proceeds from an opinion that the law of nations has been changed, and that the stipulations in our other treaties are evidence thereof. The observations that have been offered on this subject, are equally applicable to this objection, and it is therefore unnecessary to repeat them.

Not only reason, and the authority of jurists, but likewise the practice of nations, where they have been unrestrained by particular conventions, may be appealed to in support of this doctrine.

The practice of France, of Holland, even subsequent to particular stipulations, regulating this subject between themselves, has, in respect to other powers, been conformable to the law of nations. The ordinances and maritime decisions of France may be consulted to show what her practice has been, and that of Holland is evident by the convention of 1689, between her and England. The practice of Spain is understood to be the same; and in an instance that occurred during the American war, she carried the law to its utmost rigor, in assigning as a cause of condemnation of a neutral Tuscan ship, her forcible resistance of the right of search. Her capture of American ships, during the present war, on suspicion of their cargoes being enemy property, affords additional evidence of her practice and opinions on this subject. In respect to Great Britain, from the general notoriety of the fact, it seems, in some sort, unnecessary to add, that she has immemorially adhered, in her general practice, to the law of nations in its widest interpretation on this subject. In a few instances, and perhaps for special reasons, as was the case in respect to the treaty with Holland, concluded in 1667, she has entered into opposite stipulations; but at this time, unless it may be with Portugal, Great Britain has no such treaty with any nation.

So undisputed was the law on this subject, and so uniform the practice of nations in cases, not governed by a conventional rule, that Congress, in the commencement, and through the greater part of our revolution war, authorized our ships of war and privateers, to capture enemy property on board neutral ships, and our admiralty courts uniformly restored neutral property found on board enemy ships. This practice continued years after the conclusion of our treaty with France, which contains a stipulation, that free ships shall make free goods, and enemy ships enemy goods; no person, during that period, having supposed that thereby the law was altered in respect to other nations.

Towards the close of the war, to favor the views of the armed neutrality, in which league the United States were not a party, but whose opposition to Great Britain they naturally approved, Congress, in an ordinance on the subject of captures, ordained that neutral bottoms should protect enemy goods—but here they stopped. Thus far the authority was indubitable, because it was exercised only in abridgment of their own rights. Being engaged in war, they could not by their own act enlarge their rights, or abridge those of neutral ships; the extent of both being defined and settled by the public law of nations. They, therefore, never authorized the capture and condemnation of neutral goods found in enemy ships, nor could they have authorized the same, without a manifest violation of the rights of the neutral powers.

It is finally alleged that the article, if sound in its principles, is defective in those provisions which are requisite to protect and secure the neutral rights of the parties; inasmuch as it does not contain an explicit stipulation for the payment of freight on enemy goods, nor for the payment of damages for the detention or loss of neutral ships taken without just cause. I do not recollect to have met with any precise stipulation on these points, in the commercial treaties between other nations.—None such, if my recollection be right, are found in any of our other treaties; and I think it would be somewhat difficult to form such as would afford to the parties a more satisfactory security than that which arises from the law of nations—a neutral ship is entitled to freight for enemy goods captured on board her; but this right, if so admitted, may be forfeited by the irregular conduct of the neutral, by the possession of false or double papers, by the destruction of papers, or by those fraudulent concealments and evasions, which are inconsistent with fair and impartial neutrality. A ship taken and detained without just cause, is, together with her cargo, at the risk of the captors from the moment of capture; and in cases of partial or total loss, or of damages by detention, the owner is entitled to full and complete indemnification. But in case the neutral ship is under such equivocal and doubtful circumstances, as afford

probable cause to believe that either the ship, or cargo, is enemy property, a situation not to be reconciled with an open and fair neutrality, *in such case*, though on trial both ship and cargo should turn out to have been bona fide neutral property, yet the captors may avail themselves of her equivocal situation and character, in mitigation, if not under very peculiar circumstances, in total discharge of damages. No stipulation, therefore, without these exceptions, would have afforded to the parties adequate security against such irregularities; and with them, its want of precision would have left the subject as it now stands, to be regulated by the known and approved provisions of the law of nations.

These provisions being well understood, the article concludes with a stipulation against delays in the admiralty, and in the payment and recovery of the damages it shall decree.

This examination, I flatter myself, has fulfilled its object, which was to prove, that the article relinquishes no right that we possessed as a nation, that it is agreeable to, and supported by, the law of nations. A law in relation to this subject, coeval with the origin of maritime commerce, and the principles whereof have immemorially operated among nations.

It was desirable that a stipulation, similar to that contained in our other treaties, should have been obtained. But the time was unfavorable to the attainment of this object: and, as with great propriety has been observed by Mr. Jefferson, in behalf of our government—"since it depends on the will of other nations as well as our own, we can only obtain it, when they shall be ready to consent." By the 12th article, the parties agree to renew the negotiation on this point, within the compass of two years after the conclusion of the present war; when perhaps the restoration of peace, and other circumstances, may prove more propitious to our views.

CAMILLUS.

NO. XXXI.

1795.

I resume the subjects of the two last papers for the sake of a few supplementary observations.

The objections to the treaty, for not containing the principle, "that free ships make free goods," as being the relinquishment of an advantage, which the modern law of nations gives to neutrals, have been fully examined, and, I flatter myself, completely refuted.

I shall, however, add one or two reflections by way of further illustration. A pre-established rule of the law of nations, can only be changed by their *common consent.* This consent may either be express, by treaties, declarations, &c. adopting and promising the observance of a different rule, or it may be implied, by a course of practice or usage. The consent, in either case, must embrace the great community of civilized nations. If to be inferred from treaties, it must be shown that they are uniform and universal. It can, at least, never be inferred, while the treaties of different nations follow different rules, or the treaties between the same nation and others, vary from each other. So also as to usage. It must be uniform and universal, and, let it be added, it must be continued. A usage adopted by some nations, and resisted by others, or adopted by all temporarily and then discontinued, is insufficient to abolish an old, or substitute a new rule of the law of nations. It has been demonstrated, that no consent of either description has been given to the rule, which is contended for in opposition to the treaty.

The armed neutrality, so much quoted, is entirely deficient in the requisite characters. Its name imports that it was an armed combination of particular powers. It grew up in the midst of a war, and is understood to have been particularly levelled against one of the belligerent parties. It was resisted by that power. There were other powers, which did not accede to it. It is a recent transaction, and has never acquired the confirmation of continued usage. What is more, it has been virtually abandoned

by some of the parties to it—and among these, by the principal promoter of it, the politic and enterprising Catharine. It is, therefore, a perversion of all just ideas, to ascribe to such a combination the effect of altering a rule of the law of nations.

In most important questions, it is remarkable that the opposers of the truth are as much at variance with each other as they are with the truth they oppose. This was strikingly exemplified when the present Constitution of the United States was under deliberation. The opposition to it was composed of the most incongruous materials—the same thing is observable in relation to the treaty. And one instance of the contrariety applies to the rule cited above.

While some of the adversaries of the treaty complain of the admission of a contrary principle by that instrument, as the abandonment of a rule of the present law of nations; others, conceding that there is no such rule yet established, censure that admission as a *check* to its *complete* and *formal establishment*, and as a retrograde step from this desirable point.

The objection in this form is more plausible than in the other, but it is not less destitute of substance. If there has been any retrograde step, it was taken by the government prior to the treaty—authentic documents, which have been communicated by the Executive to Congress, contain the evidence of this fact.

Early in the year 1793, some British cruisers having stopped vessels of the United States, and taken out of them articles which were the property of French citizens, Mr. Genet, the then minister of France, in a letter of the 9th of July of that year, made a lively representation upon the subject to our government, insisting, in a subsequent letter of the 25th of that month, in which he recurs to the same point, that the principles of neutrality established, that friendly vessels make friendly goods; and in effect, that the violation of this rule by Great Britain was a violation of our neutral rights, which we were bound to resent.

The reply of our government, is seen in a letter from our Secretary of State to that minister, of the 24th of July. It is in these terms—"I believe," says Mr. Jefferson, "it cannot be doubted, but that by the general law of nations, the goods of a

friend, found in the vessel of an enemy, are free, and the goods of an enemy, found in the vessel of a friend, are lawful prize. Upon this principle, I presume, the British armed vessels have taken the property of French citizens found in our vessels in the cases above mentioned; and, I confess, I should be at a loss on what principle to reclaim them. It is true that sundry nations, desirous of avoiding the inconveniences of having their vessels stopped at sea, ransacked, carried into port, and detained under pretence of having enemy goods on board, have, in many instances, introduced, by their special treaties, another principle between them, that enemy bottoms shall make enemy goods, and friendly bottoms friendly goods; a principle much less embarrassing to commerce, and equal to all parties in point of gain and loss; but this is altogether the effect of particular treaty, controlling, in special cases, the general principles of the law of nations, and, therefore, taking effect between such nations only as have so agreed to control it."

Nothing can be a more explicit or unequivocal abandonment of the rule, that free ships make free goods, and *vice versa*, than is contained in this communication. But this is not all: In the letter, from Mr. Jefferson to our minister in France, of the 26th of August, 1793, instructing him to urge the recall of Mr. Genet, the subject is resumed, the position asserted in answer to Mr. Genet, insisted upon anew, and enforced by additional considerations. Among other suggestions, we find these: "We suppose it to have been long an established principle of the law of nations, that the goods of a friend are free in an enemy's vessel, and an enemy's goods lawful prize in the vessel of a friend. The inconvenience of this principle has induced several nations latterly to stipulate against it by treaty, and to substitute another in its stead, that free bottoms shall make free goods, and enemy bottoms, enemy goods. We have introduced it into our treaties with France, Holland, and Russia; and French goods, found by the two last nations in American bottoms, are not made prize of. It is our wish to establish it with other nations:—But this requires their consent also, is a work of time, and in the mean while they have a right to act on the general principle, without giving to

us or to France, cause of complaint. Nor do I see, that France can lose by it on the whole. For though she loses her goods when found in our vessels, by the nations with whom we have no treaties—yet she gains our goods when found in the vessels of the same and all other nations; and we believe the latter mass to be greater than the former."

Thus, then, stood the business antecedent to the treaty. Great Britain, adhering to the principle of the general and long established law of nations, captures French property in our vessels, and leaves free our property in French vessels. We acquiesce in this practice, without even a remonstrance or murmur. The French minister complains of it, as contrary to the principles of neutrality. We reply, that, in our opinion, it is not contrary to those principles—that it is fully warranted by the general law of nations—that treaties, which establish a different rule, are merely exceptions to that law, binding only on the contracting parties; that having no treaty of the sort with Great Britain, we should be at a loss on what ground to dispute the legitimacy of her practice. We do not simply forbear to oppose—we do not offer to France as an excuse for our forbearance, that it is inconvenient to us, at the moment, to assert a questionable right at the hazard of war—but we tell her peremptorily, that, in our opinion, no such right exists, and that the conduct of Great Britain, in the particular case, is justified by the law of nations—neither do we wrap the motive of our forbearance in silence, nor content ourselves with revealing it confidentially to France alone; but we publish it without reserve to the world, and thus, in the presence of Great Britain, and every other nation, make a formal renunciation of the pretension, that "free ships shall make free goods, and enemy ships enemy goods;" no counter declaration is heard from either house of Congress.

It was impossible to give a more full sanction to the opposite principle than was given by this conduct, and these public and positive declarations of our government. It was impossible more completely to abandon the favorite ground. It is puerile to attempt to discriminate between the force of this species of renunciation and that of an admission of its propriety by treaty. The

conduct of a government avowed and explained, as to motives, by authentic public declarations, may assert or renounce a pretension as effectually as its compacts. Every nation, with whom we had no contrary stipulation, could say to us as well before as since the treaty with Great Britain, "your government has explicitly admitted that free ships do not make free goods, and you have no right to complain of our not observing that rule towards you." Candor, therefore, would oblige us to say that the treaty has left this point where it found it—that it has only not obtained from Great Britain a concession in favor of an innovation upon the law of nations, which it is desirable to establish, but which cannot be claimed as matter of right. Though, therefore, it may not have the merit of strengthening, it has not the demerit of weakening the ground.

The difference in our position, in this respect, before and since the treaty, amounts to this, that before the treaty the government had abandoned the ground through one organ, Mr. Jefferson; by the treaty, it continued the abandonment through another organ, Mr. Jay. If we consider the organ as the voluntary cause in each case (the presumption of which is equally fair in both cases), and if there be any blame, it falls more heavily on Mr. Jefferson than on Mr. Jay; for the former founded and made the retreat, and the latter only did not advance from the disadvantageous post to which he had retreated. In other words, Mr. Jay did only not recover the ground which Mr. Jefferson had lost. And we know that, in general, it is a far more difficult task to regain than to keep an advantageous position.

But, in truth, no blame can justly be imputed in either case. The law of nations was against the rule which it is desired to introduce. The United States could not have insisted upon it as matter of right; and in point of policy it would have been madness in them to go to war, to support an innovation upon the pre-established law. It was not honorable to claim a right, and suffer it to be infracted without resistance. It is not for young and weak nations to attempt to enforce novelties or pretensions of equivocal validity. It is still less proper for them to contend, at the hazard of their peace, against the clear right of others.

The object was truly not of moment enough to risk much upon it. To use the French proverb, "*The play was not worth the candle.*" In every view, therefore, it was wise to desert the pretension.

So, also, in the midst of a war, like that in which Great Britain was engaged, it were preposterous to have expected, that she would have acceded to a new rule, which, under the circumstances of her great maritime superiority, would have operated so much more conveniently to her enemy than to herself. And it would have been no less absurd to have made her accession to that rule the *sine qua non* of an arrangement, otherwise expedient. Here again *the play would not have been worth the candle.*

The importance of the rule has artfully been very much magnified, to depreciate proportionably the treaty, for not establishing it. It is to be remembered, that if something is gained by it, something is also given up. It depends on incalculable circumstances, whether, in a particular war, most will be lost or gained. Yet the rule is, upon the whole, a convenient one to neutral powers. But it cannot be pretended that it is of so great a value, as that the United States ought to adopt it as a maxim, never to make a treaty of commerce, in which it was not recognized. They might by this maxim forego the advantages of regulating their commercial intercourse in time of peace with several foreign powers, with whom they have extensive relations of trade, by fixed and useful conventional rules, and still remain subject in time of war to the inconveniences of not having established, with those powers, the principle to which they make that sacrifice.

Though, therefore, it be a merit to a certain extent in a treaty to contain this principle, it is not a positive fault or blemish, that it does not contain it. The want of it is not a good cause of objection to a treaty otherwise eligible.

Let me add, too, in the spirit of Mr. Jefferson's letter, that however it may be our wish to establish the rule with other nations besides those with whom we have already done it, this requires their consent also, of course their conviction, that it

is their interest to consent; and that, considering the obstacles which lie in the way, the attainment of the object must be "*a work of time.*" It presupposes, in some of the principal maritime powers, a great change of ideas, which is not to be looked for very suddenly. It was not, therefore, to have been expected of our envoy, that he was to have accomplished the point at so premature and so unfavorable a juncture.

The assertion, that he has abandoned it, is made in too unqualified a manner. For while he admits the operation for the present, of the general rule of the law of nations, he has, by the 12th article, engaged Great Britain in a stipulation, that the parties will, at the expiration of two years after the existing war, *renew* their *discussion*, and *endeavor to agree* whether in any, and what cases neutral vessels shall protect enemy's property. It is true, it will be in the option of Great Britain then, to agree or not: but it is not less true that the principle is retained with consent of Great Britain in a *negotiable* state. So far perhaps some ground has been retrieved.

I confess, however, that I entertain much doubt as to the probability of a speedy general establishment of the rule, that friendly ships shall make friendly goods, and enemy ships enemy goods. It is a rule against which, it is to be feared, the preponderant maritime power, to whatever nation this character may belong, will be apt to struggle with perseverance and effect, since it would tend to contract materially the means of that power to annoy and distress her enemies, whose inferiority on the sea would naturally cause their commerce, during war, to be carried on in neutral bottoms. This consideration will account for the resistance of Great Britain to the principle, and for the endeavors of some other powers to promote it—and it deserves notice, that her last treaty with France was severely assailed by some of the chiefs of opposition, for containing a stipulation in favor of that principle. The motive for consenting to it, in this instance, probably was, that the stipulation was likely to be rendered, in a great degree, nugatory by the relative situation of the two nations, which, in almost any war in which one of the two was engaged on one side, would probably render the other a party on the opposite side.

If these conjectures be right, there is a reflection which lessens much the value of stipulations in favor of the rule; that so long as one or more of the maritime powers disavow it, there will be a strong temptation to depart from a scrupulous observance of such stipulations, as we, in relation to France, have experienced in the present war.

In the course of the arguments against the 17th article, for virtually admitting the right of search in time of war, the objectors have had the temerity to cite the opinion of *Vattel*, as being opposed to that right; and a mutilated quotation has given an appearance of truth to the assertion. It has been heretofore shown, by passages extracted from his work, that his opinion, so far from denying explicitly, supports the right to search. But it may be useful to examine the part of it which has been tortured into a contrary inference.

After affirming the right of search (B. 3, chap. 7, 8. 14) he proceeds thus: "but to avoid inconveniences, violence, and every other irregularity, the manner of the search is settled in the treaties of navigation and commerce. According to the present *custom*, credit is to be given to certificates and bills of lading produced by the master of the ship." Hence it is alleged the right to search is turned into the right of inspecting the ship's papers, which, being entitled to credit, are to preclude further scrutiny.

But what immediately follows, destroys this conclusion; the words "unless any ground appear in them, or there be very good reasons for suspecting their validity," are subjoined to the clause just quoted. This admits clearly, that the ship's papers are not to be conclusive—but that, upon just cause of suspicion, the papers may be disregarded, and the right of search may be exercised.

Who is to be the judge of the credit due to the papers and of the just cause of suspicion? Manifestly the officer of the belligerent party, who visits the neutral vessel. Then what does the whole amount to? Merely this—that ship's papers are entitled to a certain degree of respect and credit; how much, is left to the discretion of the officer of the belligerent party!—who, if he be not satisfied of the fairness and validity of the papers, may

proceed to their verification, by a more strict and particular search, and then if he still sees, or supposes he sees, just cause of suspicion, he may carry the vessel into a port of his own country, for judicial investigation. In doing this, he acts at his peril, and for an abuse of his discretion exposes himself to damages and other punishment.

This is the true and evident sense of Vattel, and it agrees with the doctrine advocated in these papers, and, I will add, with the treaty under examination.

The 17th article admits, that the vessels of each party for *just cause* of suspicion of having on board enemy's property, or of carrying to the enemy contraband articles, may be captured or detained, and carried to the nearest and most convenient port of the belligerent party, to the end that enemy's property and contraband articles aboard may become lawful prize. But so far from countenancing any proceeding without *just cause* of suspicion, or from exonerating the officer of the belligerent party from a responsibility for such proceeding, it leaves the law of nations, in this particular, in full force, and contemplating that such officer shall be liable for damages, when he proceeds without *just cause* of suspicion, provides that all proper measures shall be taken to prevent delay in deciding the cases of ships or cargoes brought in for adjudication, or in the *payment or recovery of any indemnification adjudged or agreed to be paid to the masters or owners of such ships.* Besides which, the 19th article stipulates, in order that more abundant care may be taken for the security of the respective subjects and citizens of the contracting parties, and to prevent their suffering injuries by the men-of-war and privateers of either party, that the commanders of ships of war and privateers, shall forbear doing any damage to those of the other party, committing any outrage against them; and that if they act to the contrary, *they shall be punished,* and shall also be bound in their persons and estates, *to make satisfaction and reparation for all damages, and the interest thereof, of whatever nature the said damages may be.* And further, after establishing that the commanders of privateers shall, before they are commissioned, give security to satisfy all damages and injuries, it adds, that in all

cases of aggressions their commissions shall be revoked and annulled.

These provisions not only conform to, and corroborate the injunctions of the laws of nations, but they refute the assertion, that the treaty is altogether deficient in precautions for guarding neutral rights; since those above-mentioned are among the most efficacious. It is not presumable that any stipulations have been or can be made which will take away all discretion from the marine officers of the belligerent parties; for this would be a total surrender of the rights of belligerent to neutral nations, and so long as any discretion is left, its right or wrong exercise will depend on the personal character of each officer; and abuses can only be restrained by the penalties that await them. Those stipulations of treaties, then, which reinforce the laws of nations as to the infliction of penalties, are the most effectual of the precautions which treaties can adopt for the security of neutral rights; and in this particular the treaty with Great Britain is to the full as provident as our other treaties. In one point I believe it is more so; for it expressly stipulates a revocation of the commissions of the commanders of privateers, for the aggressions they may commit.

Is not the passage last cited from Vattel a true commentary on those stipulations, for regulating and mitigating the right of search, which are found in our own and other treaties? Do they not all intend to reserve to the belligerent party a right of judging of the validity and fidelity of the papers to be exhibited, and of extending the search or not, according to the circumstances of just suspicion which do or do not appear? and if this be their true construction, as it certainly is their construction in practice, which our own experience testifies, to what, after all, do they amount, more than without them the laws of nations, as universally recognized, of themselves pronounce? What real security do they afford more than the treaty with Great Britain affords?

It is much to be suspected, that there will always be found advantages essentially nominal, operating or not according to the strength or weakness of the neutral party; which, if strong, will

find abundant foundation in the acknowledged laws of nations on which to rest the protection of its rights.

It has been said to be just matter of surprise, that these precautions should have no place in a treaty with Great Britain, whose conduct on the seas, so particularly suggested and enforced every guard to our rights that could be reasonably insisted on. Observations of this kind assume constantly the supposition that we had it in our power to fashion every provision of the treaty exactly to our own taste, and that the ideas of the other contracting party were to have no influence even upon the minor features of the contract. But this supposition is absurd; and a treaty may still be entitled to our approbation, which adjusts acceptably the great points of interest, though in some of its details it falls short of our desires. Nor can any well-informed man sincerely deny that it was to have been expected, that an adjustment of the particulars in question, would fall short of our ideas. It may be answered, that we were then at liberty not to make the treaty; so we were, but does it follow that it would have been wise to split on such points?—upon a just estimate, their intrinsic value is very moderate.

CAMILLUS.

NO. XXXII.

1795.

The eighteenth article of the treaty, which regulates the subject of contraband, has been grievously misrepresented; the objections used against it with most acrimony, are disingenuous and unfounded! Yet while I make this assertion, which, I flatter myself, I shall be able to prove, I shall not pretend to maintain that it is an article completely satisfactory. I even admit that it has one unpleasant ingredient in it, and I am convinced that our envoy must have consented to it with reluctance.

But while candor demands this concession, it equally admonishes us, that, under the circumstances of the moment, the points

in this respect to be adjusted were peculiarly unmanageable—that the position of the other party rendered an arrangement entirely agreeable to us, impracticable; that without compromise nothing could have been regulated; that the article made no change for the worse in our prior situation, but in some particulars made our ground better; and that estimating truly the relative circumstances of the parties, there is no probability that any thing more acceptable could have been established.

I will add, that a degree of imperfection, which may fairly be attributed to this article, is far from being of such importance, as, on solid calculations, ought to defeat the treaty. No clear right is abandoned, no material interest of the nation injured.

It is one thing, whether every part of the treaty be satisfactory—another, and a very different thing, whether in the aggregate it be eligible or not, and ought to be accepted or rejected. Nations could never make contracts with one another, if each were to require that every part of it should be adjusted by its own standard of right and expediency. The true question always is upon the collective merits of the instrument; whether, upon the whole, it reasonably accommodates the opinions and interests of the parties. Tried by this test, the treaty negotiated with Great Britain, fully justifies the acceptance of it by the constituted authorities of our country, and claims the acquiescence of every good citizen.

The most labored, and, at the same time, the most false of the charges against the eighteenth article is, that it allows provisions to be contraband in cases not heretofore warranted by the laws of nations, and refers to the belligerent party, the decision of what those cases are. This is the general form of the charge. The draft of a petition to the legislature of Virginia, reduces it to this shape. The treaty "*expressly* admits, that provisions are to be held contraband in cases other than when bound to an invested place, and *impliedly* admits, that such cases exist at present."

The first is a palpable untruth, which may be detected by a bare persual of the article.—The last is an untrue inference, impregnated with the malignant insinuation that there was a design to sanction the unwarrantable pretension of a right to inflict famine on a whole nation.

Before we proceed to an analysis of the article, let us review the prior situation of the parties. Great Britain, it is known, had taken and acted upon the ground, that she had a right to stop and detain, on payment for them, provisions belonging to neutrals, going to the dominions of France. For this violent and impolitic measure, which the final opinion of mankind will certainly condemn, she found color, in the sayings of some writers of reputation, on public laws.

A passage of this kind, from Vattel, has been more than once quoted, in these terms, "Commodities, particularly used in war, and the importation of which, to an enemy, is prohibited, are called *contraband* goods. Such are military and naval stores, timber, horses, and *even provisions in certain junctures, when there are hopes of reducing the enemy by famine.*" Heinecius* countenances the same opinion, and even Grotius seems to lean towards it.†

The United States, with reason, disputed this construction of the law of nations! restraining the general propositions which appear to favor it, to those cases in which the chance of reducing by famine was *manifested* and *palpable*, such as the cases of particular places, bona fide, besieged, blockaded or invested. The government accordingly remonstrated against the proceeding of Great Britain, and made every effort against it which prudence, in the then posture of affairs, would permit. The order for seizing provisions, was, after a time, revoked.

In this state our envoy found the business, pending the very war in which Great Britain had exercised the pretension, with the same administration which had done it, was it to have been expected that she would, in a treaty with us, even virtually or impliedly have acknowledged the injustice or impropriety of the conduct? Here was no escape, as in the instance of the order of the 6th of November, 1793, in the misconceptions of her officers. The question was to condemn a deliberate and unambiguous act of the administration itself. The pride, the reputation, and the interest of that administration forbade it.

* Law of nature and nations. B. 2. C. 9. S. 201. Navibus ob vect.

† Book III. Chap. 1. and V. 3. Chap. 1. and X.

On our side, to admit the pretensions of Great Britain was still more impossible.—We had every inducement of character, right and interest against it. What was the natural and only issue out of this embarrassment? Plainly, to leave the point unsettled; to get rid of it; to let it remain substantially where it was before the treaty. This, I have good ground to believe, was the real understanding of the two negotiators; and the article has fulfilled that view.

After enumerating specifically what articles shall be deemed contraband, it proceeds thus, "And whereas the difficulty of *agreeing* on the *precise cases*, in which alone *provisions* and *other articles*, not generally contraband, may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise: It is further agreed, that whenever any such articles, so becoming contraband *according to the laws of nations*, shall, for that reason, be seized, the same shall *not be confiscated*, but the owners thereof shall be *speedily* and *completely indemnified;* and the captors, or, in their default, the government under whose authority they act, shall pay to the masters or owners of such vessels, the full value of all articles with a reasonable mercantile profit thereon, together with the freight and also the demurrage, incident to such detention."

The difficulty of agreeing on the precise cases in which articles, not generally contraband, become so, from particular circumstances, is expressly assigned as the motive to the stipulation which follows.—This excludes the supposition that any cases whatever were intended to be admitted or agreed. But this difficulty rendered it expedient to provide against the inconveniences and misunderstandings which might thence arise—a provision, with this view, is, therefore, made, which is that of liberal compensation for the articles taken—The evident intent of this provision is, that in *doubtful* cases, the inconveniences to the neutral party being obviated or lessened by compensation, there may be the less cause or temptation to controversy and rupture —the affair may be more susceptible of negotiation and accommodation. More than this cannot be pretended; because it is

further agreed, "that whenever any such articles, so become contraband, *according to the existing laws of nations*, shall, for that reason, be seized, the same shall not be confiscated, but the owners thereof shall be speedily and completely indemnified," &c. &c.

Thus the *criterion* of the cases, in which articles, not generally contraband, may, from particular circumstances, become so, is expressly the *existing law of nations;* in other words, the law of nations at the time the transaction happens. When these laws pronounce them contraband, they may, for that reason, be seized; when otherwise, they may not be seized. Each party is as free as the other to decide whether the laws of nations do, in the given case, pronounce them contraband or not, and neither is obliged to be governed by the opinion of the other. If one party, on a false pretext of being authorized by the laws of nations, makes a seizure, the other is at full liberty to contest it, to appeal to those laws, and, if it thinks fit, to oppose, even to reprisals and war. This is the express tenor of the provision—there is nothing to the contrary; nothing that narrows the ground; nothing that warrants either party in making a seizure, which the law of nations, independent of the treaty, permits; nothing which obliges either party to submit to one, when it is of opinion the law of nations has been violated by it.

But as liberal compensation is to be made in every case of seizure, whereof difference of opinion happens, it will become a question of prudence and expediency, whether to be satisfied with the compensation, or to seek further redress. The provision will, in doubtful cases, render an accommodation of opinion the more easy, and, as a circumstance conducing to the preservation of peace, is a valuable ingredient in the treaty. A very different phraseology was to have been expected, if the intention had been, to leave each party at liberty to seize, agreeably to its own opinion of the law of nations, upon the condition of making compensation. The stipulation would thus have been: "It is agreed, that whenever either of the contracting parties shall seize any such articles so *becoming* contraband, and which shall, for that reason, be seized;" this makes, not the opinion of either party, but the

fact of the articles having *become* contraband by the laws of nations, the condition of the seizure.

A cavil has arisen on the term "*existing*," as if it had the effect of enabling one of the parties to make a law of nations for the occasion. But this is a mere cavil.

No one nation can make a law of nations; no positive regulation of one state, or of a partial nomination of states, can pretend to this character. A law of nations is a law which nature, agreement, or usage, has established between nations; as this may vary from one period to another by agreement or usage, the article very properly uses the term "existing," to denote that law, which at the time the transaction may happen, shall be then the law of nations. This is a plain and obvious use of the term, which nothing but a spirit of misrepresentation could have perverted to a different meaning.

The argument against the foregoing construction is in substance this (viz.), it is now a settled doctrine of the law of nations, that provisions and other articles, not generally contraband, can only become so when going to a place besieged, blockaded, or invested—cases of this kind are fully provided for in a subsequent part of the article; the implication therefore is, that something more was intended to be embraced in the antecedent part.

Let us first examine the fact, whether all the cases of that kind are comprehended in the subsequent part of the article. I say they are not—the remaining clause of the article divides itself into two parts. The first describes the case of a vessel sailing for a port or place belonging to an enemy, without knowing that the same is either besieged, blockaded, or invested; and provides, that, in such case, the vessel may be turned away, but not detained, nor her cargo, if not contraband, confiscated, unless after notice she shall again attempt to enter: the second describes the case of a vessel, or goods, which had entered into such port or place before it was besieged, blockaded, or invested, and declares that the one or the other shall not be liable to confiscation, but shall be restored to the owners thereof. These are the only cases described or provided for. A third, which occurs on the slightest

reflection, is not mentioned: the case of a vessel going to a port or place which is besieged, blockaded, or invested, with notice of its being in that state when she commences her voyage, or previous to her receiving notice from the besieging, blockading, or investing party. This is left to the operation of the general law of nations, except so far as it may be affected in respect to compensation by the antecedent clause. Thus the fact, which is the foundation of the argument, fails, and with it, of course, the argument itself.

But had this been otherwise, the conclusion would still have been erroneous—the two clauses are entirely independent of each other, and though they might both contemplate the same cases in whole, or in part, they do it with an eye to very different purposes.

The object of the first is to lessen the danger of misunderstanding, by establishing this general rule, that whenever articles, not commonly contraband, become so from particular circumstances, according to the law of nations, they shall still not be confiscated, but, when seized, the owners of them shall be indemnified.

The object of the last is to regulate some special consequences with regard to vessels and goods going to, or which had previously gone to places besieged, blockaded, or invested; and in respect to which the dispositions of the laws of nations may have been deemed doubtful or too rigorous. Thus it is held, that the laws of nations permit the confiscation of ships and goods going to places besieged, blockaded, or invested; but this clause decides, that if going without notice, so far from being confiscated, they shall not even be detained, but shall be permitted to go whithersoever they please. If they persist after notice, then the contumacy shall be punished with confiscation. In both instances the consequence is entirely different from every thing in the antecedent clause.

There, there is seizure, with compensation. Here, in one instance, seizure is forbidden, and permission to go elsewhere is enjoined. In the other instances, the offending things are confiscated, which excludes the idea of compensation. Again, the

last part of the last clause stipulates in the case, which it supposes, the restoration of the property to its owners, and so excludes both seizure and compensation. Hence it is apparent the objects of the two clauses are entirely foreign to each other, and that no argument nor inference whatever can be drawn from the one to the other.

If it be asked, what other cases there can be, except those of places besieged, blockaded, or invested? and if none other, what difficulty in defining them? why leave the point so vague and indeterminate? One answer, which indeed has already been given in substance, is, that the situation of one of the parties prevented an agreement at the time; that not being able to agree, they could not define; and the alternative was to avoid definition. The want of definition only argues want of agreement. It is strange logic to assert, that this or that is admitted, because nothing is defined.

Another answer is, that even if the parties had been agreed that there were no other cases than those of besieged, blockaded, or invested places, still there would have remained much room for dispute about the precise cases, owing to the impracticability of defining what is a besieged, blockaded, or invested place. About this there has been frequent controversy; and the fact is so complicated, puts on such a variety of shapes, that no definition can well be devised, which will suit all. Thence nations, in their compacts with each other, frequently do not attempt one; and where the attempt has been made, it has left almost as much room for dispute about the definition as there was about the thing.

Moreover, is it impossible to conceive other cases than those mentioned above, in which provisions and other articles not generally contraband might, on rational grounds, be deemed so? What if they were going expressly, and with notice, to a besieging army, whereby it might obtain a supply essential to the success of its operations? Is there no doubt that it would be justifiable in such case to seize them? Can the liberty of trade be said to apply to any instance of direct and immediate aid to a military expedition? It would be at least a singular effect of

the rule, if provisions could be carried without interruption for the supply of a Spanish army besieging Gibraltar, when, if destined for the supply of the garrison in that place, they might, of right, be seized by a Spanish fleet.

The calumniators of the article have not had the candor to notice that it is not confined to provisions, but speaks of provisions and other articles. Even this is an ingredient which combats the supposition that countenance was intended to be given to the pretension of Great Britain with regard to provisions, which, depending on a reason peculiar to itself, cannot be deemed to be supported by a clause including other articles, to which that reason is entirely inapplicable.

There is one more observation which has been made against this part of the article which may deserve a moment's attention. It is this, that though the true meaning of the clause, be such as I contend for, still the existence of it affords to Great Britain a pretext for abuse which she may improve to our disadvantage. I answer, it is difficult to guard against all the perversions of a contract which ill faith may suggest. But we have the same security against abuses of this sort, which we have against those of other kinds, namely, the right of judging for ourselves, and the power of causing our rights to be respected. We have this plain and decisive reply to make, to any uncandid construction which Great Britain may, at any time, endeavor to raise, "The article pointedly and explicitly makes the existing law of nations, the standard of the cases in which you may rightfully seize provisions and other articles not generally contraband. This law does not authorize the seizure in the instance in question; you have consequently no warrant under the treaty for what you do."

The same disingenuous spirit which tinctures all the conduct of the adversaries of the treaty, has been hardy enough to impute to it the last order of Great Britain, to seize provisions going to the dominions of France.

Strange, that an order issued before the treaty had ever been considered in this country, and embracing the other neutral powers besides the United States, should be represented as the

fruit of that instrument!* The appearances are, that a motive no less imperious than that of impending scarcity, has great share in dictating the measure, and time, I am persuaded, will prove that it will not ever be pretended to justify it by any thing in the treaty.

CAMILLUS.

NO. XXXIII.

1796.

The course thus far pursued in the discussion of the 18th article, has inverted the order of it, as it stands in the treaty. It is composed of three clauses; the two last of which have been first examined—I thought it advisable, in the outset, to dispose of an objection which has been the principal source of clamor.

The first clause of that which remains to be examined, enumerates the articles, which, it is agreed, shall be deemed contraband of war. These are, "all arms, and implements serving for the purpose of war, such as cannon, muskets, mortars, petards, bombs, grenadoes, carcases, saucisses, carriages for cannon, musket-rests, bandoliers, gunpowder, match, salt-petre, balls, pikes, swords, head-pieces, cuirasses, halberts, lances, javelins, horse furniture, holsters, belts, and generally all other implements of war; as also timber for ship-building, tar or rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted."

All which articles are declared to be just objects of confiscation, when attempted to be carried to any enemy of either party.

It is well understood, that war abridges the liberty of trade of neutral nations; and that it is not lawful for them to supply either of two belligerent parties with any article deemed contra-

* As reasonable would it be to place to its account the similar order which was issued before the mission of an envoy was thought of.

band of war; nor may they supply any article whatever to a place besieged, blockaded, or invested. The former case includes a special catalogue of articles which have an immediate reference to war—the latter extends to all kinds of goods and merchandise. The penalty in both cases is confiscation.

These positions have not been disputed. The only question which has been or can be raised, must respect the enumeration of the articles which are to be considered as contraband.

In comparing the enumeration in the present treaty, with that of our former treaties, we find the differences to be these. Our former treaties include "*horses*," and one of them "soldiers," which our present does not; but our present includes "timber for ship-building, tar or rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted," which are not to be found in our former treaties.

It is alleged that the including of these articles is an extension of the list of contraband beyond the limit of the *modern* law of nations; in support of which allegation, it is affirmed, that they have been excluded by the uniform tenor of the treaties which have been formed for more than a century past.

Though this position will not, upon careful examination, appear correct; yet it is so far founded, as to claim an acknowledgment, that the article under consideration has, in this instance, pursued the *rigor* of the law of nations. It was to this I alluded, when I observed that it contained one unpleasant ingredient.

It is a fact, that far the greater proportion of modern treaties exclude naval stores or articles for ship-building; yet this is not universally the case.

By the third article of the treaty of alliance and commerce between Great Britain and Denmark, in 1670, the parties agree, "not to furnish the enemies of each other with any provisions of war, as soldiers, arms, engines, guns, ships, or other necessaries for the use of war, nor to suffer the same to be furnished by their subjects." An explanation of this article was made by a convention, dated the 4th of July, 1780, which, after enumerating as

contraband, the usual catalogue of military implements, adds, in the precise terms of our article, "as also timber for ship-building, tar, rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron, and fir planks only excepted."

In a series of treaties between Great Britain and Portugal, down to the year 1703, I do not discover that there has ever been a regulation of the articles which are to be treated as contraband, between these powers.

And between Sweden and Great Britain, the 11th article of a treaty, entered into in 1661, (and still in force unaltered, though a subsequent commercial treaty was made between those powers as late as 1776,) subjects to confiscation equally all articles called *contraband*, and *especially money*, *provisions*, &c. This specification not being complete, naval stores are left upon the open ground of the law of nations; but money and provisions are superadded. This latitude would bear little doubt as to the intention to include naval stores.*

* An opinion has been propagated that Sweden armed in concert with Denmark, in order to maintain the neutral right of carrying corn and flour to France, in opposition to the convention of March, 1793, between Great Britain and Russia; and that in consequence of this proceeding, the remonstrances of these powers have proved more successful than we have been in obtaining satisfaction from Great Britain.

This opinion is, throughout, an error, made use of by those whose persevering aim has been, by silencing truth, reason, and moderation, and inflaming the angry passions of the community, to *involve* the country in anarchy and war. The authors of this imposture, as well as the exalted patriots who have seen in the memorial of our envoy, the humiliation of our country, are referred to a "collection of state papers relative to the war against France," published by Debret, in 1794. The perusal of the Swedish state papers, as well as the memorials of the able and prudent Bernstorff, may teach these gentlemen a little of what is deemed good manners on these occasions.

So far from even remonstrating, much less arming on account of the British instruction of June, 1793, when that order was notified at Stockholm, by the British resident there, the government of Sweden, by their resident at London, acknowledged, in terms too respectful to be repeated in the hearing of our exclusive patriots, that Sweden was perfectly satisfied with the instruction; since, instead of payment, which the order insured, all provisions, in virtue of an existing treaty between the two nations, were liable to confiscation when seized, on their way to an enemy.

This note is added for the purpose of refuting a popular error, and not to vindi-

It appears from these specimens, that there is not a perfect uniformity in the conventions between nations; and that no purely positive law of nations can be deduced from that source.

If we call to our aid the principles of reason and natural justice, which are the great foundations of the law of nations, we shall not discover, in this instance, *data* as certain as could be wished, for a satisfactory conclusion; and the soundest determination, which we can adopt, will be, that beyond a certain point, the question is in a great degree arbitrary, and must depend materially upon conventional regulation between nation and nation. Hence it is there is so great a diversity in the stipulations of different parties on this point; indicating that there is no absolute rule. Hence also it is, that several nations, at different times, being at war, have thought themselves authorized to regulate and announce, by public declarations, the articles which they would consider and treat as contraband.

The opinion of writers will be found to support the article as it stands, in the particular, which is now the subject of discussion.

Vattel, we have before seen, (B. B. C. 3. 6, 7. s. 112,) expressly ranks *naval stores* and *timber* under the denomination of contraband goods.

Hienecius (*de navibus*, &c., chap. I. S. 10, 11 and 14) accords in the same position to the extent of whatsoever appertains to the equipment of vessels.*

Bynkershoek is less explicit. After laying it down as the general rule that naval stores, or the materials of ships, are not contraband, he proceeds thus—"Yet it sometimes happens that the materials of ships may be prohibited, *if an enemy is in great want of them, and without them cannot conveniently carry on the war*;"† and he afterwards cites, with approbation, several edicts or

cate the instruction alluded to, which I consider as an injury to the rights of neutral nations, that has not been justified by the answers that have been given by Great Britain to the American and Danish memorials.

* Vela, Restes et si quæ alia ad apparatum nauticum pertinent.

† Quandoque tamen accidit ut et navium materia prohibeatur, si hostis ea quam maxime indigeat at absque ea commode bellum gerere haud possit. Quæstionum juris Publici L., i. chap. x., page 80.

proclamations, which the states general, in different wars with different nations, have published, declaring those articles contraband—thus referring it to the belligerent party to judge of, and pronounce the cases when they may rightfully be deemed so. And the same idea seems to have been adopted by *Grotius** and some other writers on public law.—I have not met with one whose opinion excludes naval stores from the list of contraband.

Grotius, in discussing this question, divides goods into three classes, 1. Those which are of use only in war, as arms, &c.; 2. Those which serve only for pleasure; 3. Those useful for peaceable as well as for warlike purposes, "as money, *provisions*, ships and *naval stores*"—concerning which he argues in substance, that the first class are clearly contraband; that the second class are clearly not contraband; and that the third class may or may not be so, according to the state and circumstances of the war; alleging, that *if necessary to our defence, they may be intercepted*, but upon condition of restitution, unless there be just cause to the contrary; which just cause is explained by the examples of sending them to a besieged, or blockaded place.

The reasoning about the third class has a very inconvenient latitude. It subjects the trade of neutral nations too extensively to the discretion of belligerent powers; and yet there is a serious embarrassment about drawing the true line, one which will duly conciliate the safety of the belligerent, with that of the neutral, party.

What definition of contraband, consulting reason alone, shall we adopt? Shall we say, that none but articles peculiar to war ought to receive this denomination? But is even powder *exclusively applicable* to war? Are nitre and sulphur, its chief ingredients, *peculiar* to war? Are they not all useful for other purposes; some of them in medicine, and other important arts? Shall we say, that none but articles prepared and organized for war, as their primary object, ought to have that character? But what substantial difference can reason know, between the supply to our enemy of powder, and that of sulphur and saltpetre, the easily convertible materials of this mischievous compound?

* B. iii., c. i., v.

How would either of these definitions, or any other, comport with what those of our treaties which are thought unexceptionable, in this particular, have regulated, or with what is common in the treaties between other nations? Under which of them shall we bring horses and their furniture?

If we say, that in wars by land, these are instruments little less important than men, and, for that reason, ought to be comprehended; it may be asked in return, what can be more necessary in wars by sea, than the materials of ships, and why should they not, for the like reasons, be equally comprehended?

In wars between maritime nations, who transfer its calamities from the land to the ocean, and wage their most furious conflicts on that element, whose dominions cannot be attacked or defended without a superiority in naval strength, who moreover possess distant territories, the protection and commercial advantages of which, depend upon the existence and support of navies, it is difficult to maintain, that it is against reason, or against those principles which regulate the description of contraband, to consider as such the materials which appertain to the construction and equipment of ships.

It is not a sufficient objection, that these articles are useful for other purposes, and especially for those of maritime commerce. Horses are of primary utility in agriculture; and it has been seen that there are other articles indisputably on the list of contraband, which are entirely within the principle of that objection.

Rutherforth, a sensible modern writer,* after truly observing, "that the notion of contraband goods is of some latitude, so that it is not easy precisely to determine what are and what are not of this sort—that all *warlike stores* are certainly contraband, but that still the question returns, what are to be reckoned warlike stores?" —after noticing the division of articles by Grotius and the difficulties with regard to the third class—draws this conclusion, that "where a war *is carried on by sea* as well as by land, not only ships of war which are already built, but the materials for build-

* Institutes of Natural Law, book ii., chap. x. xix.

ing or repairing of ships, will come under the notion of *warlike stores.*" This is a precise idea, and, it must be confessed, on principle, not an irrational one.

If we resort to the opinions which have been entertained and evidenced in our own country, they will be found to have given great extent to the idea of contraband. Congress, by an act of May the 8th, 1777, establishing the form of commissions for privateers, authorize them "to attack, subdue, and take all ships and other vessels whatever, carrying soldiers, arms, gunpowder, ammunition, *provisions*, or any other contraband goods, to any of the British armies or ships of war, employed against the United States." And in their act of the 27th of November, 1780, acceding, in part, to the rule of the armed neutrality, they declare, that contraband shall be thereafter *confined* to the articles contained under this character, in our treaty with France; indicating, by this, their opinion that the list of those articles is abridged by that treaty. If the first mentioned act was well founded (and there are strong reasons for it), it establishes that even provisions may be contraband, if going directly to invading fleets and armies; which affords an instance of their being so (analogous to the case heretofore put of a besieging army) in addition to the cases of places besieged, blockaded, or invested. And as to naval stores, I assert a belief, that the common opinion of those persons in this country, whose contemplation had embraced the subject, included them in the catalogue of contraband.

Nevertheless, from the number of modern treaties, which exclude from that list naval stores, and moreover from the manifest interest of nations, truly considered, to narrow the rights of war in favor of those of peace; this clause of the treaty, which takes a different route, is to be regretted as pursuing the rigor of the law of nations.—Still, however, it cannot be objected to, as a departure from the law; and agreeing with the course observed by Great Britain antecedent to the treaty, it does not place our trade in those articles upon a worse footing than it was, independent of the treaty.

The period of the negotiation was most unpropitious to a change for the better—in the midst of any maritime war, a

belligerent nation, enjoying a naval superiority, was like to have been tenacious of a right which she supposed herself to possess to intercept naval supplies to her enemy.—But in a war, in which it was more than ordinarily possible that the independent existence of a nation might depend on the retaining a naval superiority, it was to have been foreseen that she would not consent to relinquish such a right. The alternative was, to insert the article as it stands, or to omit it wholly.

Had it been omitted, the condition of naval stores would have been the same as with it. But our merchants would then have continued to be exposed to uncertain risks, which is always a great inconvenience. It is desirable, in similar cases, to have a fixed rule. Merchants can then accommodate their speculations to the rule; and causes of national contention are avoided.

It is in this view to be regretted, that the cases when provisions may be treated as contraband, could not have been agreed upon; but as this was impracticable, the next best thing has been done, by establishing the certainty of compensation in all such cases. This gives one important species of security, obviates one source of contention. And if really there may be other cases than the universally admitted ones, in which provisions can fairly be deemed contraband (as that designated by the act of Congress of May 1777) the securing of compensation was truly a point gained by the article.

But while I confess, that the including of naval stores, among contraband articles, is an ineligible feature of the treaty, I ought to declare, that its consequences to the interests of the United States, as it regards the trade in those articles in time of war, do not appear to me important.—War between other nations, when we are at peace, will always increase the demand for our bottoms, so as to require much additional building of vessels, and probably in that way to produce a more beneficial species of employment of the naval stores our country affords, than that of their exportation for sale.

The adversaries of the treaty are eagle-eyed to spy out instances in which it omits any favorable minutes which are found in our other treaties; but they forget to balance the account by

particulars which distinguish it favorably from those treaties. Of this nature is the omission of horses from the list of contraband, and still more the salutary regulations, with regard to vessels and their cargoes going to places besieged, blockaded, or invested. I do not discover that these useful provisions or their equivalents, are in either of our treaties with France, Holland, or Sweden.

It has been said, in reference to this article, "whenever the law of nations has been a topic for consideration, the result of the treaty accommodates Great Britian, in relation to one or both of the republics at war with her, as well as in the abandonment of the rights and interests of the United States,"—and the following examples are given, to each of which will be annexed a reply.

I. "American vessels, bound to Great Britain, are protected, by sea-papers, against French and Dutch searches; but when bound to France or Holland, are left exposed to British searches, without regard to ships' papers." The truth of this proposition depends on another, which is, that the sea-papers are to be absolutely conclusive; but reasons have been given for doubting this construction, which, it has been remarked, does not obtain in practice. And it is certainly a violent one, inasmuch as it puts it in the power of the neutral, to defeat the rights of the belligerent party, in points of great consequence to its safety.

II. "American provisions, in American vessels, bound to the enemies of Great Britain, are left by the treaty to the seizure and use of Great Britain; but provisions, whether American or not, in American vessels, cannot be touched by the enemies of Great Britain." The construction of the treaty, upon which this difference is supposed, has been demonstrated to be erroneous.—The difference therefore, does not exist.

III. "British property, in American vessels, is not subject to French or Dutch confiscation.—French or Dutch property in American vessels, is subject to British confiscation." This was the case before the treaty, which makes no alteration in the matter.—Moreover, it is counterbalanced by this circum-

stance;—that American property, in British vessels, is subject to confiscation by France or Holland; but American property, in French or Dutch vessels, is not subject to confiscation by Great Britain.

IV. "Articles of ship-building, bound to the enemies of Great Britain for the equipment of vessels of trade only, are contraband.—Bound to Great Britain, for the equipment of vessels of war, are not contraband." This, also, was the case before the treaty, which, consequently, has not in this particular more than the former, produced any benefit to one party, to the prejudice of the other. I forbear to dwell upon the article of horses, as falling under a contrary discrimination;—nor shall I insist on the additional circumstances, that all American goods not generally contraband, if going to a place besieged, blockaded, or invested by French or Dutch forces, are liable to confiscation by France or Holland; if going to a place besieged, blockaded, or invested by British forces, are not liable to confiscation by Great Britain.

Differences of these several kinds are the accidental results of the varying views of different contracting powers, and form slender grounds of blame or praise of the respective contracts made with them.

The form of the criticisms last stated, leaves little doubt that it was designed to insinuate an intention in this article to favor the Monarchs of Great Britain, at the expense of the Republics of France and Holland. The candor of it may be judged of by the two facts, first, that it makes no alteration, in this view, in the antecedent state of things; and secondly, that the relative situation of Holland, as the enemy of Great Britain, is subsequent to the adjustment of the article.

CAMILLUS.

NO. XXXIV.

1796.

The remaining articles of the treaty principally relate to those maritime regulations, that are usually inserted in modern treaties between commercial nations—and on that consideration, as well as from their evident utility in enabling us to distinguish with precision between what is, and what is not lawful, in relation to those points—they are entitled to our approbation; still however even some of these customary articles, whose object and meaning are so well understood, have been deemed exceptionable.

The first paragraph of the nineteenth article, in order to prevent injuries by men of war, or privateers, enjoins (as before noticed) all commanders of ships of war and privateers, and all other citizens or subjects, of either party, to forbear doing any damage to those of the other, or from committing any outrage against them: and declares, that if they act to the contrary, they shall be punishable, and moreover bound in their persons and estates to make full satisfaction and reparation for all damages, of whatsoever nature the same may be.

These prohibitions are conformable with the laws of the United States. If under color of authority, those to whom the same does not relate, shall receive injury, the act, according to its circumstances, is an offence, for which the offender is not only answerable to his own country, but moreover to the injured party, to whom he is bound to make full and complete reparation.

The open and explicit views of the parties, and their mutual engagement to put this law in execution against all offenders, will be a salutary check upon the too frequent irregularities that occur in the course of war between maritime nations. The paragraph is a copy of a similar one contained in the fifteenth article of the commercial treaty between France and Great Britain, concluded in 1786, and agrees with the fourteenth article of our treaty with Holland. In order to guard still more effectually

against the injuries to which the citizens and subjects may be exposed from the private ships of war of each other, the next paragraph stipulates, that all commanders of privateers, before they receive their commissions, shall be subjected to give security, by at least two responsible sureties, who have no interest in the privateer, in the sum of fifteen hundred pounds sterling, or six thousand six hundred and sixty-six dollars; or, if the privateer is manned with more than one hundred and fifty men, in the sum of three thousand pounds sterling, or thirteen thousand three hundred and thirty-three dollars, to satisfy all damages and injuries committed by such privateers, her officers, or any of her men, against the tenor of the treaty, or the laws and instructions for the regulation of their conduct; and in case of aggression, the commission of such privateer shall be recalled and made void.

This particular regulation has been frequently introduced in modern treaties, and exists in this precise shape in the last treaty of commerce between France and Great Britain; I have found no instance where a larger sum has been mentioned. It has, with little consideration, been made an objection to this regulation, that the amount of the bonds is not adequate to compensate or satisfy the damages that may be committed by these privateers.

The preceding part of the article gives the injured party a remedy against the persons and estates of the aggressors; the bonds are not required for the exclusive purpose of being the fund, to which the injured may have recourse for satisfaction; but principally for the purpose of excluding from the command of privateers, those dissolute and irregular characters, who are not restrained by either moral or political ties, and for whose good behavior, responsible and disinterested men would not become bondsmen. The same principle is developed in the civil administration of every nation. In cases of pecuniary trust, it is a common and useful precaution, to require surety for the faithful discharge of the office; and the principal advantage of this regulation is to secure the employment of virtuous and upright officers. The amount of the bonds required on these occasions is

sufficient for this purpose, though inferior to the property confided to them.

Thus the treasurer of the United States, who has the custody of millions, gives bonds for only one hundred and fifty thousand dollars, the collectors of New-York and Philadelphia for fifty and sixty thousand dollars; sums very far short of the public money [of which they are in the receipt], yet sufficient to secure the public against characters of doubtful integrity. The adequacy of the sums, [in the particular case,] is moreover evidenced by the law and practice of our own country. In the resolution of Congress, of the third of April 1776, which, so far as regards this point, remained in force throughout the American war, Congress required that the commander of every privateer, before his commission should be delivered to him, should give bonds, with sureties, to the president of Congress, in the sum of five thousand dollars, if the vessel was of or under one hundred tons; and of ten thousand dollars, if the vessel was upwards of one hundred tons, to observe the rules and instructions prescribed for their government. These sums are one quarter less than those required by the article before us.

The last paragraph, requiring the judges of the admiralty courts to furnish formal and duly authenticated copies of their proceedings in cases of the condemnation of vessels or cargoes, belonging to the citizens or subjects of the parties, is pursuant to that reasonable course of proceeding, which ought always in this and similar cases to prevail.

The twentieth article, which is in prevention of piracy, has the sanction of numerous precedents. A pirate is the common enemy of all mankind.—All, therefore, should unite in refusing him assistance and refuge, and in the establishment of such regulations relative to the sale of his plunder, as, by shutting against him every market, may thereby annihilate the motives to his piracy.

The twenty-first article stipulates, that the citizens and subjects of the parties, shall do no acts of hostility or violence against each other, nor accept commissions or instructions so to act from any foreign state being an enemy to the other party.—

That the enemies of either nation shall not be allowed to invite, or endeavor to enlist, in their military service, any of the citizens or subjects of the other; and the laws, prohibiting such offences, are to be punctually executed. The article farther stipulates, if any citizen or subject of either party, who has accepted of a foreign commission to arm a privateer against the other, it shall be lawful for the said party to treat and punish the said citizen or subject, *having such commission*, as a pirate.

The general tenor of this article is in comformity with the spirit of our preceding laws on this subject; it is moreover in perfect unison with the duties of neutrality; those duties which a just regard to the principles of integrity, as well as an enlightened pursuit of our own interest, require us faithfully to perform.

Two objections have been offered against this article; one that it precludes such of our citizens as, with a view of acquiring military knowledge, would otherwise engage as volunteers in foreign service—the other, that it [makes] every citizen and subject, of either party, who has accepted a foreign commission to arm a privateer against the other, and who shall be taken in possession of such commission, [liable] to be punished as a pirate.

In respect to the first objection, if, by a rigorous construction, the case is included within the prohibition, it should be remarked, that it is applicable only to such engagements as commence and are made in time of mutual war. If we have citizens, who, with the view of military education. are inclined to engage in foreign service, though from past experience there is not much reason to conclude that the examples would be numerous, they have full scope, as I understand the article, in the periods of peace, to enter into any of the regular armies of Europe, that they may prefer; and being thus engaged, they are free to make the campaigns of war against Great Britian, if that is their passion, without injuring this article. [The prohibition seems to be against engaging in the military service of a nation, previously in the condition of "*enemy*" to one of the parties.]

The second objection has even less plausibility than the first; the disingenuous means that have been used to excite a reprobation of this clause of the article, manifest the want of truth and patriotism of those who have employed them: passion and the spirit of opposition have asserted, that the provision before us is so extensive as to place the subordinate officers and private men, on board of a privateer, within the predicament of her commander; nay, that all persons, citizens, or subjects, of either nation, who would accept commissions, or [enter, in any capacity,] in a foreign army or navy, would, in consequence of this stipulation, be liable to be treated and punished as pirates. It is sufficient, after noticing these attempts to impose upon the public, to observe that the stipulation [*expressly*] confines the punishment, in question, to the commanders of privateers, who, contrary to the laws of the land, and the clear and equitable obligations of the members of a neutral nation, shall be taken with such commission; and that it does not extend to the under officers or crew, much less to such persons, as, contrary to the preceding inhibition of the article, should accept commissions in a foreign army or navy. In respect to such misdemeanors in all cases (except that of equipping and commanding a privateer, which will expose the commander, when taken, to be punished as a pirate) the offence is cognizable only by the nation [within whose jurisdiction the offence is committed, or] of which the offender is a citizen, or subject; and, by our laws, is punishable only by fine and imprisonment.

[A perversion of the sense of the clause, stipulating, that "the law against all such offences and aggressions shall be punctually executed," has been attempted, though nothing can be more innocent or unexceptionable. Its plain meaning is, that each party, in the cases falling within its jurisdiction, shall faithfully put in execution its own laws against the offences and aggressions, in contravention of the article. A stipulation between the governments, to execute laws on a certain subject, can mean nothing else than that each shall execute its own laws on that subject, in the cases appertaining to its jurisdiction.]

Though most of the objections preferred against the treaty are marked with that illiberal spirit which characterizes the party who have unceasingly labored to bring into discredit the government of the country, yet few of them have been less veiled than this which condemns a stipulation intended to curb and restrain the few dissolute and daring characters, who, from the least worthy of all motives that lead to military enterprise, might otherwise engage in this piratical warfare.

What virtuous citizen would feel himself justified in accepting such command? What must be the morals of those instructors, who contend for a freedom to commit what humanity and honor forbid? Every treaty that we have concluded with other nations is enriched with this stipulation; not only our own treaties, but those between other nations contain it. How is it that we nowhere discover a trace of disapprobation, either on the part of our statesmen, or from an enlightened people, against a series of treaties, formed by different public ministers, and ratified by a succession of Congresses, each of which contains a provision that the crime of accepting a foreign commission to arm and command a privateer, against a nation with whom we are at peace, shall be treated and punished as piracy? Is it that our virtue has become less severe? our morality more indulgent? Or is it that our predecessors were less vigilant in defending the rights of the citizens, than the ostentatious patriots of the present day? But it is time to dismiss an objection entirely destitute of integrity and [decency].

CAMILLUS.

NO. XXXV.

1796.

The twenty-second article bears upon its face its own justification—it is pursuant to those [maxims which enlightened moralists recommend, and just nations respect]. It prescribes a course of conduct the most likely to procure satisfaction for injuries,

and to maintain peace, and is therefore entitled to the approbation of all good men and real patriots. [It is particularly valuable to a weak nation, or a nation in its infancy, as an additional guard against sudden and unforeseen attacks of more powerful rivals.]

The first paragraph of the twenty-third article provides for the hospitable reception of the public or national ships of war of the parties, in the ports of each other; and engages that the officers of such ships shall be free from insult, and treated with decorum and respect.

The practice which our government has adopted in relation to these points, independent of parties, is agreeable to this provision.* And though the stipulation will be of less importance to us than it would be, were we possessed of a respectable naval force, yet it may be useful. By our treaty with France, our ships of war have a right to enter their ports only in case of urgent necessity, and not freely and for mere convenience.

With Spain and Portugal we have no treaties, and consequently not an ascertained or perfect right to use their ports. Our navigation must be protected from the Barbary powers by force or by treaty. It is questionable whether the latter mode will prove effectual without the support of the former; Congress have therefore resolved to equip a small naval force, for the special object of protecting our trade against the Algerines, and the other Barbary powers. Some port convenient to the scene of its cruising will be of essential advantage to the efficiency and success of its employment: not only the ports of Great Britain, but likewise the port of Gibraltar will, by this article of the treaty, be open to us; and our frigates will be there entitled to a hospitable reception, and their officers to that respect which shall be due to the commissions which they bear.

The other paragraph of this article provides, in case an American vessel by stress of weather, danger from enemies, or other misfortune, should be obliged to seek shelter in any British port,

* See Mr. Jefferson's letter of September 9th, 1793, to Mr. Hammond; also his letter of the same date to Mr. Van Berckel.

into which in ordinary cases such vessel could not claim to be admitted, that she shall be hospitably received, permitted to refit, and to purchase such necessaries as she may want; and, by permission of the local government, to sell such part of her cargo as may be necessary to defray her expenses. Our treaty with France contains a similar provision; but the restrictions with which it is guarded are less than those of the article before us.

The twenty-fourth article stipulates, that it shall not be lawful for any foreign privateers, commissioned by any nation at war with either of the parties, to arm the vessels, or to sell or exchange their prizes in the ports of either of the parties; and that they shall not be allowed to purchase more provisions than shall be necessary to carry them to the nearest port of the nation from whom they received their commission; and the twenty-fifth article stipulates that the ships of war and privateers of either party may carry whithersoever they please the ships and goods taken from their enemy; and that such prizes, on their arrival in the ports of the parties, shall not be searched, seized, detained, nor judicially examined touching the validity of their capture, but may freely depart—and furthermore, that no shelter or refuge shall be given in the ports of one of the parties to such as have made prizes upon the citizens or subjects of the other. Though the law of nations is explicit, that one nation having formed a particular stipulation with another, is not capable, by a subsequent treaty with a third nation, to do away or annul its former stipulations, but that the elder treaty, in such case, remains in full force, notwithstanding such posterior and contradictory treaty; yet, in order to remove all cavil on this point, and to maintain a scrupulous regard to good faith, even in appearance as well as in reality, and especially in relation to our treaty with France, the article further declares, "that nothing in the treaty contained shall be construed or operate contrary to former and existing public treaties with other sovereigns or states," and adds, that neither of the parties, while they continue in friendship, will form any treaty inconsistent with this and the preceding article. [This last clause has been censured as an undue restraint; while it is in fact a mere redundancy; as long as a treaty between two

nations continues in force, it is against good faith for either to form a treaty with another nation inconsistent with it; if the treaty is once disclosed, by whatever means, no treaty with another nation can be inconsistent with it. The clause, therefore, only converts into an express promise, what without it is an implied one, that the parties will not contravene their stipulations with each other by repugnant engagements with a third party. The disingenuity on this point has gone so far as to torture the clause into a positive stipulation against any treaty with another power conferring peculiar advantages of commerce upon that power. It is a sufficient reply to this, that the clause is expressly confined to the twenty-fourth and twenty-fifth articles; determining nothing as to the other articles of the treaty. The general principle of this last objection has been sufficiently discussed elsewhere.]

The article concludes with a mutual engagement, that neither of the parties will permit the ships or goods of the other to be taken within cannon shot of the coast, nor in any of the bays, ports, or rivers of their territories; and in case of such capture, the party whose territorial rights are violated shall use his utmost endeavors to obtain full satisfaction for the vessels or goods taken. This stipulation is conformable to the duty and practice of nations who have entered into no special engagements requiring the same, and agrees with a common provision in public treaties.

Hitherto we have prudently avoided granting to any nation a right to arm their privateers or to sell their prizes in our ports; our laws are explicit in prohibiting such equipments; and the exclusion thereof, contained in the twenty-fourth article, is agreeable to the declared policy of the country. We have engaged in our treaty with France to prohibit her enemies from selling their prizes within our ports; but not having engaged to permit France to sell her prizes therein, we were free to agree with Great Britain, that her enemies shall likewise be prohibited from selling their prizes within our territory. A clause in the twenty-fifth article denies all refuge to the ships of war and privateers that have made prizes upon either of the parties; and the

last clause of the twenty-fourth article stipulates, that foreign privateers, enemies to either of the parties, shall not be allowed to purchase more provisions than sufficient to carry them to the nearest port of the nation from whom they received their commissions.

These clauses will operate only against such nations as have not, by an elder treaty, secured a right of reception in the ports of the parties. Still, however, it is alleged that these articles violate our treaty with France. It has already been observed that the treaty contains a clear and explicit agreement of the parties, excepting from its operation all former existing public treaties. Our treaty with France is an antecedent and existing public treaty, and consequently excepted, in all its parts, from the operation of the treaty before us. Whatever right or privilege, therefore, is secured to France in virtue of that treaty, she will continue to enjoy, whether the same respects the reception of her public ships of war, privateers or prizes, in our ports, or the exclusion therefrom of those of her enemies.

Could there be a doubt on this point, the practice of other nations, and especially that of France, on the very point, would effectually remove it. The fifteenth and thirty-sixth articles of the commercial treaty of Utrecht, between France and Great Britain, contain the same stipulations as the twenty-fourth and twenty-fifth articles of the treaty before us. That treaty was in existence and force at the time of forming our treaty with France, yet France found no difficulty in the insertion of the same stipulations in her treaty with us. She could not have considered their insertion in the treaty with us as a violation of her treaty with Great Britain, otherwise good faith would have restrained her. The war that soon after took place between France and Great Britain, dissolved the treaty of Utrecht. Our treaty with France remained in force; yet, in the year one thousand seven hundred and eighty-six, France and Great Britain entered into a commercial treaty, the sixteenth and fortieth articles of which renew the stipulations contained in the fifteenth and thirty-sixth articles of the treaty of Utrecht.

If France was free, first to form these stipulations with us, in

1778, notwithstanding her prior and existing treaty with Great Britain, and afterwards in 1786 to renew the same stipulations with Great Britain, we must be equally free in a treaty with the same, or any other power, to agree to similar stipulations. Both were free, and neither violates the former engagements, by assenting, as we have done, to these stipulations in a posterior treaty.

It is further alleged, that these articles are injurious to the interest of the United States, because they prohibit, in certain cases, foreign privateers to rendezvous in our ports, and to sell within our territory, the prizes they may have taken. If it is desirable to render our principal sea-ports and cities scenes of riot and confusion; if it is politic to divide our citizens, by infusing into their minds the hostile spirit with which the nations at war are animated against each other; if we are prepared to see the prostration of public authority, and to behold the laws trampled upon by armed banditti; if we are ready to invite our citizens to abandon their regular and useful employments, and to engage, as adventurers, even against each other, in the pursuit of plunder, then is the objection well-founded, then is the restraint pernicious, then is the stipulation worthy of condemnation. But if to establish the reverse of all this, is the effort and aim of every wise and prudent government, the stipulation in question demands the approbation of all virtuous citizens.

But were none of these consequences to be apprehended from the free admission of the privateers of all nations engaged in war, and the permission to sell their plunder, it would, notwithstanding, be against the interests of the United States to allow the same. It is a sound commercial principle, that the interest of buyers, as well as sellers, is best promoted by a free competition. The great number of the sellers of foreign manufactures and productions, afford the best market for the buyers. The great number of buyers of our productions, afford the best market for the sellers—foreign privateers are precarious sellers, and buyers only for their own consumption. They drive away and banish from our markets, both buyers and sellers. When our coasts are lined with foreign privateers that rendezvous in

our ports, the merchant ships of all nations, not excepting our own, will be liable to interruption, and discouraged from coming to our markets; and those of the belligerent powers will be generally excluded. Our markets might, perhaps, derive supplies from the prizes that such privateers should take, so as, in some degree, to compensate for the deficiency that would proceed from the exclusion of foreign merchantmen; but this supply would be uncertain, irregular, ill-assorted, and partial, while the principal commercial detriment would exist without mitigation, that of a partial or total destruction of foreign competition in the purchase of our agricultural and other productions.

If, moreover, it is the duty, as well as the interest, of the United States, to observe an exact and scrupulous neutrality, amidst the wars of other nations, one of the most efficacious means of effecting that purpose, will be, to remove every temptation that might lead our citizens to an opposite course. No allurement would be more likely to seduce them from their duty than that which is offered by the expected gains of privateering —no avenue of political mischief should, therefore, be more carefully closed.

If these articles are exceptionable, in any respect, it is that in imitation of the analogous articles of our treaty with France, they allow the privateers of the parties, in cases not inconsistent with former treaties, to rendezvous in, and their prizes to be brought into, each other's ports and harbors: it would, in my judgment, have been the true policy of the United States, as well as with the view of maintaining an impartial and decided neutrality in the wars of Europe, from a participation in which our remote situation, with [due] prudence, is an exemption; as likewise, in order to promote, in the most advantageous manner, our national prosperity, totally and for ever to have excluded all foreign privateers and prizes from our ports and harbors.

But having entered into these stipulations with France, by which she has the use of all our ports against all other nations, we having the use of her ports only against those nations who have not an elder treaty with her, it would have manifested an unwise partiality to have refused to enter into similar stipula-

tions with other nations who might desire them; accordingly they are found in our treaties with as well as in that under consideration—another refutation of the objection to this last as being in these respects repugnant to that with France.

The twenty-sixth article provides, in case of a rupture between the parties, that the merchants and others of each nation, residing in the dominions of the other, may remain and continue their trade during good behavior; in case, however, their conduct should become suspicious, they may be removed, and a twelvemonth after the publication of the order of removal is to be allowed for that purpose: but this term is not to be granted to such persons as act contrary to law, or are guilty of any offence against the government: all such persons may be forthwith removed or sent out of the respective dominions of the parties. The residue of the article is calculated to ascertain the condition of the parties, when the rupture shall be deemed to exist —each nation remains the exclusive judge of the foreigners among them, and will be able to decide from their behavior, how far their residence may be compatible with the public safety. In case of suspicion only, that their residence will prove detrimental, they may order them to depart, reasonable time being allowed them to collect their effects. On the one hand, the article affords to the parties perfect security against the irregular and suspicious conduct of foreigners, who may be among them on the breaking out of war, and, on the other, consults with that liberality which the modern usage of nations sanctions, the safety and convenience of those, who, under the faith of the respective governments, have chosen a residence in the dominions of the parties. Our treaties with France, Holland, and Sweden, secure to the merchants of the respective parties a limited period, after the commencement of war, within which they may collect their effects, and remove; and the article before us relative to this subject, is a transcript of the second article of the treaty of commerce, of 1786, between France and Great Britain. [The objection, therefore, to there being a certain term within which they cannot be removed upon bare suspicion lies against our other treaties and against almost all the treaties of Europe for many

years—the pretence to order away upon mere supposition would defeat all the stipulations, that allow a certain term to collect, sell, and remove debts and effects; and for that reason could not be supported.

The remainder of the article which gives an option to each party, either to request the recall, or *immediately to send home*, the ambassador of the other without prejudice to their mutual friendship and good understanding, is a valuable feature. The power "*immediately to send home*," without giving offence, avoids much delicate embarrassment connected with an application to recall—it renders it easier to arrest an intriguing minister in the midst of a dangerous intrigue, and it is a check upon the minister by placing him more completely in the power of the government with which he resides. These last circumstances are particularly important to a republic, one of the chief dangers of which, arises from its exposure to foreign intrigue and corruption.]

The twenty-seventh article, which provides for the delivery of all persons, charged with murder or forgery committed within the jurisdiction of one party, and who have taken refuge within the territories of the other, is a regulation of peculiar worth between nations whose territories are contiguous to each other; without such regulation, the ease with which the perpetrators of these atrocious crimes might escape punishment, especially on the frontiers, by passing out of one jurisdiction into the other, would, in a great measure, destroy the security against these offences, that arises from the fear and certainty of punishment. The provision, that such delivery shall not be made unless upon the exhibition of such evidence of criminality, as, according to the laws of the place where the fugitive shall be found, would justify his apprehension and commitment for trial, if the crime had there been committed, will prevent vexatious requisitions, and is a caution due to the rights of individuals.

The twenty-eighth, and concluding article, establishes, that the first ten articles of the treaty, shall be permanent; that the remaining ones, except the twelfth, which, with the twenty-fifth, constitute the body of the commercial part of the treaty, shall be

limited in their duration to twelve years; and reciting, that the twelfth will end, by its own limitation, at the end of two years after the termination of the present European war, further establishes, that, within the last mentioned term, and in time to perfect the business by the expiration of that term, the discussion of the subject of the twelfth article shall be renewed, and if the parties cannot agree on such new arrangement, concerning it, as may be satisfactory, that then all the said remaining articles (in other words, all but the first ten) shall cease and expire together. This article, which is an entirely independent one, obviates the doubt, affected to be entertained, whether the exception in the ratification, with regard to the twelfth article, did not do away the stipulation, by which the continuance of the treaty, except the first ten articles, beyond the term of two years after the expiration of the war, is made to depend on a further arrangement of the West India trade. This separate article is positive and conclusive, absolutely annulling the treaty at that time, if such an arrangement be not made, and thereby places it in the power of either party so to manage the matter as to put an end to all the commercial part of it, except what relates to inland trade and navigation with the neighboring British territories, at the end of the short period of two years from the termination of the existing war. This alone is sufficient to confound all the high-charged declamations against the tendency of the treaty to ruin our trade and navigation.

CAMILLUS.

NO. XXXVI.

1796.

It is now time to fulfil my promise of an examination of the constitutionality of the treaty. Of all the objections which have been contrived against this instrument, those relating to this point are the most futile.—If there be a political problem capable of complete demonstration, the constitutionality of the treaty, in all

its parts, is of this sort.—It is even difficult to believe, that any man in either house of Congress, who values his reputation for discernment or sincerity, will publicly hazard it by a serious attempt to controvert the position.

It is, nevertheless, too much a fashion with some politicians, when hard pressed on the expediency of a measure, to intrench themselves behind objections to its constitutionality—aware that there is naturally in the public mind a jealous sensibility to objections of that nature, which may prelispose against a thing otherwise acceptable, if even a doubt, in this respect, can be raised. They have been too forward to take advantage of this propensity, without weighing the real mischief of the example. For, however it may serve a temporary purpose, its ultimate tendency is, by accustoming the people to observe that alarms of this kind are repeated with levity and without cause, to prepare them for distrusting the cry of danger when it may be real: yet the imprudence has been such, that there has scarcely been an important public question, which has not involved more or less of this species of controversy.

In the present case, the motives of those who may incline to defeat the treaty, are unusually strong for creating, if possible, a doubt concerning its constitutionality.

The treaty, having been ratified on both sides, the dilemma plainly is between a violation of the Constitution, by the treaty, and a violation of the Constitution by obstructing the execution of the treaty.

The VIth article of the Constitution of the United States, declares, that "the Constitution and the laws of the United States, made in pursuance thereof, all *treaties made, or which shall be made under the authority of the United States*, shall *be the supreme law of the land*, any thing in the Constitution or laws of any State to the contrary notwithstanding." A law of the land, till revoked or annulled, by the competent authority, is binding, not less on each branch or department of the government than on each individual of the society. Each house of Congress collectively, as well as the members of it separately, are under a constitutional obligation to observe the injunctions of a pre-existing law, and

to give it effect—if they act otherwise, they infringe the Constitution; the theory of which knows, in such case, no discretion on their part.—To resort to first principles for their justification, in assuming such a discretion, is to go out of the Constitution for an authority, which they cannot find in it—it is to usurp the original character of the people themselves—it is, in principle, to prostrate the government.

The cases must be very extraordinary that can excuse so violent an assumption of discretion. They must be of a kind to authorize a revolution in government;—for every resort to original principles, in derogation from the established Constitution, partakes of this character.

Recalling to view, that all but the first ten articles of the treaty are liable to expire at the termination of two years after the present war; if the objection to it in point of constitutionality cannot be supported—let me ask, who is the man hardy enough to maintain, that the instrument is of such a nature as to justify a revolution in government?

If this can be answered in the affirmative, adieu to all the securities which nations expect to derive from constitutions of government. They become mere bubbles, subject to be blown away by every breath of party. The precedent would be a fatal one—our government, from being fixed and limited, would become revolutionary and arbitrary—all the provisions which our Constitution, with so much solemnity, ordains "for forming a more perfect union, establishing justice, insuring domestic tranquillity, providing for the common defence, promoting the general welfare, and securing the blessings of liberty to ourselves and posterity," evaporate and disappear——

Equally will this be the case, if the rage of party spirit can meditate, if the momentary ascendency of party, in a particular branch of the government, can effect, and if the people can be so deceived as to tolerate—that the *pretence* of a violation of the Constitution shall be made the instrument of its actual violation.

This, however, cannot be—there are already convincing indications on the very subject before us, that the good sense of the

people will triumph over prejudice and the acts of party—that they will finally decide according to their true interest, and that any transient or partial superiority, which may exist, if abused for the purpose of infracting the Constitution, will consign the perpetrators of the infraction to ruin and disgrace. But alas! what consolation would there be in the ruin of a party for the ruin of the Constitution?

It is time to enter on the momentous discussion. The question shall be examined in the four following views—1. In relation to the theory of the Constitution—2. In relation to the manner in which it was understood by the convention who framed it, and by the people who adopted it—3. In relation to the practice upon a similar power in the confederation—4. In relation to the practice under our present constitution, prior to the treaty with Great Britain.—In all these views, the constitutionality of the treaty can be vindicated beyond the possibility of a serious doubt.

1. As to the theory of the Constitution.—The Constitution of the United States distributes its powers into three departments, legislative, executive, judiciary.—The first article defines the structure, and specifies the various powers, of the legislative department—the second article establishes the organization and powers of the executive department—the third article does the same with respect to the judiciary department—the fourth and fifth, and sixth articles, which are the last, are a miscellany of particular provisions.

The first article declares that "all *legislative power* granted by the Constitution shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives."

The second article, which organizes and regulates the executive department, declares that the "*executive power* shall be vested in a President of the United States of America;" and proceeding to detail particular authorities of the executive, it declares that the "President shall have power, by and with the advice and consent of the Senate, *to make treaties*, provided two-thirds of the senators present concur." There is in no part

of the Constitution any explanation of this power to make treaties, any definition of its objects, or delineation of its bounds.—The only other provision in the Constitution respecting it, is in the sixth article, which provides, as already noticed, that all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land!—and this notwithstanding any thing in the Constitution or laws of any State to the contrary.

It was impossible for words more comprehensive to be used than those which grant the power to make treaties. They are such as would naturally be employed to confer a *plenipotentiary* authority.—A power "to make treaties," granted in these indefinite terms, extends to all kinds of treaties, and with all the latitude which such a power, under any form of government, can possess—the power "*to make*" implies a power to act *authoritatively* and *conclusively*, independent of the after-clause which expressly places treaties among the supreme laws of the land. The thing to be made is a treaty.

With regard to the objects of the treaty, there being no specification, there is, of course, a *carte blanche*. The general proposition must, therefore, be, that whatever is a proper subject of compact, between nation and nation, may be embraced by a treaty between the President of the United States, with the advice and consent of the Senate, and the correspondent organ of a foreign state.

The authority being general, it comprises, of course, whatever cannot be shown to be necessarily an exception to it.

The only constitutional exception to the power of making treaties is, that it shall not change the Constitution; which results from this fundamental maxim, that a delegated authority cannot alter the constituting act, unless so expressly authorized by the constituting power. An agent cannot new-model his own commission.—A treaty, for example, cannot transfer the legislative power to the executive department, nor the power of this last department to the judiciary; in other words, it cannot stipulate that the President, and not Congress, shall make laws for the United States, that the judges, and not the President, shall command the national forces.

Again, there is also a *national* exception to the power of making treaties, as there is to every other delegated power, which respects abuses of authority in palpable and extreme cases. On natural principles, a treaty, which should manifestly betray or sacrifice the private interests of the state, would be null. But this presents a question foreign from that of the modification or distribution of constitutional powers. It applies to the case of the pernicious exercise of a power, where there is legal competency. Thus the power of treaty, though extending to the right of making alliances offensive and defensive, might not be exercised in making an alliance, so injurious to the state as to justify the non-observance of the contract.

Beyond these exceptions to the power, none occurs that can be supported.

Those which have been insisted upon, towards invalidating the treaty with Great Britain, are not even plausible. They amount to this, that a treaty can establish nothing between the United States and a foreign nation, which it is the province of the legislative authority to regulate in reference to the United States alone. It cannot, for instance, establish a particular rule of commercial intercourse between the United States and Great Britain; because it is provided in the Constitution, that Congress "*shall have power to regulate commerce with foreign nations.*" This is equivalent to affirming that all the objects upon which the legislative power may act, in relation to our country, are excepted out of the power to make treaties.

Two obvious considerations refute this doctrine. One, that the power to make treaties, and the power to make laws, are different things, operating by different means, upon different subjects; the other, that the construction resulting from such a doctrine would defeat the power to make treaties, while its opposite reconciles this power with the power of making laws.

The power to make laws is "the power of pronouncing authoritatively the will of the nation as to all persons and things over which it has jurisdiction:" or it may be defined to be "the power of prescribing rules binding upon all persons and things over which the nation has jurisdiction." It acts compul-

sively upon all persons, whether foreigners or citizens, and upon all things within the territory of such nation, and also upon its own citizens and their property without its territory in certain cases and under certain limitations. But it can have no obligatory action whatsoever upon a foreign nation, or upon any person or thing within the jurisdiction of a foreign nation.

The power of treaty, on the other hand, is the power by *agreement*, *convention*, or *compact*, to establish rules binding upon two or more nations, their respective citizens and property. The rule established derives its reciprocal obligation from promise, from the faith which the contracting parties pledge to each other —not from the power of either to prescribe a rule for the other. It is not here the will of a *superior* that commands; it is the consent of two independent parties that contract.

The *means* which the power of legislation employs, are *laws* which it enacts, or rules which it enjoins; the *subject* upon which it acts is the nation of whom it is, the persons and property within the jurisdiction of the nation. The *means* which the power of treaty employs, are *contracts* with other nations, who may or may not enter into them—the *subjects* upon which it acts, are the nations contracting and those persons and things of each to which the contract relates. Though a treaty may effect what a law can, yet a law cannot effect what a treaty does. These discriminations are obvious and decisive; and however the operation of a treaty may, in some things, resemble that of a law, no two ideas are more distinct than that of *legislating* and that of *contracting*.

It follows that there is no ground for the inference pretended to be drawn, that the legislative powers of Congress are excepted out of the power of making treaties. It is the province of the latter to do what the former cannot do. Congress (to pursue still the case of regulating trade) may regulate, by law, our own trade and that which foreigners come to carry on with us; but they cannot regulate the trade which we may go to carry on *in foreign* countries; they can give to us no rights, no privileges there. This must depend on the will and regulations of those countries; and, consequently, it is the province of the power of

treaty to establish the rules of commercial intercourse *between* foreign nations and the United States. The legislative may regulate our own trade, but treaty only can regulate the national trade between our own and another country.

The Constitution accordingly considers the power of treaty as different from that of legislation. This is proved in two ways: 1. That while the Constitution declares that all the *legislative* powers which it grants shall be vested in Congress, it vests the power of making treaties in *the President* with consent of the Senate. 2. That the same article by which it is declared that the *executive* power shall be vested in a President, and in which sundry executive powers are detailed, gives the power to make treaties to the President, with the auxiliary agency of the Senate. Thus the power of making treaties is placed in the class of executive authorities; while the force of laws is annexed to its results. This agrees with the distribution commonly made by theoretical writers, though perhaps the power of treaty, from its peculiar nature, ought to form a class by itself.

When it is said that Congress shall have power to regulate commerce with foreign nations, this has reference to the distribution of the general legislative power of regulating trade between the national and the particular governments; and serves merely to distinguish the right of regulating our external trade, as far as it can be done by law, which is vested in Congress, from that of regulating the trade of a State within itself, which is left to each State.

This will the better appear from the entire clause. "The Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes," which is the same as if it had been said, The whole powers of regulating trade *by law* shall reside in Congress, except as to the trade within a State, the power to regulate which shall remain with such State. But it is clearly foreign to that mutual regulation of trade between the United States and other nations, which, from the necessity of mutual consent, can only be performed by treaty. It is indeed an absurdity to say, that the power of regulating trade by law is incompatible with the power of regulating

it by treaty; since the former can, by no means, do what the latter can alone accomplish; consequently, it is an absurdity to say, that the *legislative* power of regulating trade is an exception to the power of making treaties.

Laws are the acts of legislation of a particular nation for itself. Treaties are the acts of the legislation of several nations for themselves jointly and reciprocally. The legislative powers of one state cannot reach the cases which depend on the joint legislation of two or more states. For this, resort must be had to the *pactitious* power, or the power of treaty. This is another attitude of the subject, displaying the fallacy of the proposition, that the legislative powers of Congress, are exceptions to, or limitations of, the power of the President, with the aid of the Senate, to make treaties.

CAMILLUS.

NO. XXXVII.

1796.

It shall now be shown, that the objections to the treaty, founded on its pretended interference with the power of Congress, tend to render the power of making treaties, in a very great degree, if not altogether, nominal. This will be best seen by an enumeration of the cases of pretended interference.

1st. The power of Congress to lay taxes, is said to be impaired by those stipulations which prevent the laying of duties on particular articles; which also prevent the laying of higher or other duties on British commodities than on the commodities of other countries, and which restrict the power of increasing the difference of duties on British tonnage and on goods imported in British bottoms.

2d. The power of Congress to regulate trade is said to be impaired by the same restrictions respecting duties, inasmuch as they are intended, and operate, as regulations of trade—by the stipulations against prohibitions in certain cases; and, in general,

by all the rights, privileges, immunities, and restrictions in trade, which are contained in the treaty; all which are so many regulations of commerce, which are said to encroach upon the legislative authority.

3d. The power of Congress to establish an uniform rule of naturalization, is said to be interfered with, by those provisions of the treaty which secure to the settlers, within the precincts of the British posts, the right of becoming citizens of the United States, and those which, in certain cases, remove the disability of alienism as to property.

4th. The power of Congress "to define and punish piracies and felonies, committed on the high seas, and offences against the law of nations," is said to be contravened by those parts of the treaty, which declare that certain acts shall be deemed piracy, which constitute certain other things offences, and stipulate the reciprocal punishment of them by each.

5th. It is also said that the Constitution is violated, in relation to that provision which declares, that "no money shall be drawn from the treasury but in consequence of appropriations made by law"—by those parts of the treaty which stipulate compensations to certain commissioners, and indemnifications to Great Britain, in certain cases to be adjusted and pronounced by the commissioners; and generally, by all those parts which may involve an expenditure of money.

6th. The Constitution is said to be violated in that part which empowers Congress to dispose of, and make all needful rules and regulations respecting the *territory*, or other property of the United States, by those provisions of the treaty which respect the adjustment of boundary in the cases of the rivers St. Croix and Mississippi.

Lastly. The Constitution is said to be violated, in its provisions concerning the judiciary department, by those parts of the treaty which contemplate the confiding to the determination of commissioners certain questions between the two nations.

A careful inspection of the treaty with these objections in view, will discover, that of the 28 articles which compose it, at least seventeen are involved in the charge of unconstitutionality;

and that these seventeen comprise all the provisions which adjust past controversies, or establish rules of commercial intercourse between the parties. The other eleven, which are the 1st, 10th, 17th, 18th, 19th, 20th, 22d, 23d, and 24th, except the 1st, are made up of provisions which have reference to war; the first merely declaring that there shall be peace between the parties. And it is a question, even with respect to all of these, except the 1st, and 10th, whether they also are not implicated in the charge; inasmuch as some of their dispositions have commercial relations. Is not this alone sufficient to bring under a strong suspicion the validity of the principles which impeach the constitutionality of the instrument?

It must have been observed that the argument in the last number is applicable to all the legislative powers of Congress, as well as to that of regulating trade, which was selected, by way of illustration, on the ground of its being common to all.—Indeed the instance of the regulations of trade is that which is most favorable to the opposite doctrine, since foreign nations are named in the clause; the true intent of which, however, has been explained.

The same reasoning, too, would extend the power of treaties to those objects which are consigned to the legislation of individual States; but here the Constitution has announced its meaning in express terms, by declaring, that the treaties which have been and shall be made under the authority of the United States, shall be the supreme law of the land, any thing in the Constitution or laws of any State to the contrary notwithstanding. This manifestly recognizes the supremacy of the power of treaties over the laws of particular States, and goes even a step farther.

The obvious reason for this special provision, in regard to the laws of individual States, is, that there might otherwise have been room for question—whether a treaty of the Union could embrace objects, the internal regulation of which belonged to the separate authorities of the States. But with regard to the United States there was no room for a similar question.

The power of treaty could not but be supposed commensurate with all these objects to which the legislative power of the Union

extended, which are the proper subjects of compacts with foreign nations.

It is a question among some theoretical writers—whether a treaty can repeal *pre-existing laws?* This question must always be answered by the particular form of government of each nation. In our Constitution, which gives, *ipso facto*, the force of law to treaties, making them equal with the acts of Congress, the supreme law of the land, a treaty must necessarily repeal an antecedent law contrary to it; according to the legal maxim that "*leges posteriores priores contrarias abrogant.*"

But even in those forms of government, in which there may be room for such a question, it is not understood that a treaty containing stipulations which require the repeal of antecedent laws, is, on that account, unconstitutional and null. The true meaning is, that the antecedent laws are not, *ipso facto*, abrogated by the treaty—but the legislature is, nevertheless, bound in good faith, under the general limitation, stated in another place, to lend its authority to remove obstacles which previous laws might oppose to a fair execution of a treaty.

One instance of the inconsistency, prevailing in the arguments against the treaty negotiated by Mr. Jay, is observable in this point. To get rid of the infractions of our treaty of peace with Great Britain by certain laws of particular States, it is strenuously maintained that treaties control the laws of States. To impeach the constitutionality of the treaty under consideration, it is objected, that, in some points, it interferes with the objects of State legislation. The express provision of the Constitution in this particular, quoted above, has not been sufficient to check the rage for objection.

The absurdity of the alleged interferences will fully appear, by showing how they would operate upon the several kinds of treaties usual among nations. These may be classed under three principal heads. 1. Treaties of commerce, 2. Treaties of alliance, 3. Treaties of peace.

Treaties of commerce are, of course, excluded; for every treaty of commerce is a system of rules devised to regulate and govern the trade between contracting nations; invading directly

the exclusive power of regulating trade which is attributed to Congress.

Treaties of alliance, whether defensive or offensive, are equally excluded, and this on two grounds—1. Because it is their immediate object to define a case or cases in which one nation shall take part with another in war, contrary, in the sense of the objection, to that clause of the Constitution which gives to Congress the power of declaring war; and 2. Because the succors stipulated, in whatever shape they may be, must involve an expenditure of money—not to say, that it is common to stipulate succors in money, either in the first instance or by way of alternative. It will be pertinent to observe incidentally, in this place, that even the humane and laudable provision in the seventeenth article, which all have approved, is within the spirit of the objection; for the effect of this is to restrain the power and discretion of Congress to grant reprisals, till there has been an unsuccessful demand of justice. Nothing can better illustrate the unreasonable tendency of the principle.

Treaties of peace are also excluded, or, at the least, are so narrowed as to be in the greatest number of cases impracticable. The most common conditions of these treaties are restitutions or cessions of territory, on one side or on the other, frequently on both sides, regulations of boundary—restitutions and confirmations of property—pecuniary indemnifications for injuries or expenses.—It will, probably, not be easy to find a precedent of a treaty of peace, which does not contain one or more of these provisions, as the basis of the cessation of hostilities, and they are all of them naturally to be looked for in an agreement which is to put an end to the state of war between conflicting nations.

Yet they are all precluded by the objections which have been enumerated: pecuniary indemnifications, by that which respects the appropriations of money; restitutions or cessions of territory or property, regulations of boundary, by that which respects the right of Congress to dispose of, and make all needful rules and regulations concerning the territory and property of the United States. It is to be observed, likewise, that cessions of territory are almost always accompanied with stipulations in favor

of those who inhabit the ceded territory, securing personal privileges and private rights of property; neither of which could be acceded to on the principles of that objection, which relates to the power of naturalization; for this power has reference to two species of rights, those of privilege and those of property. An act allowing a foreigner to hold real estate is so far an act of naturalization; since it is one of the consequences of alienism, not to be able to hold real estate.

It follows, that if the objections which are taken to the treaty, on the point of constitutionality, are valid, the President, with the advice and consent of the Senate, can make neither a treaty of commerce nor alliance, and rarely, if at all, a treaty of peace. It is probable, that on a minute analysis, there is scarcely any species of treaty which would not clash, in some particular, with the principle of those objections; and thus, as was before observed, the power to make treaties, granted in such comprehensive and indefinite terms, and guarded with so much precaution, would become essentially nugatory.

This is so obviously against the principles of sound construction; it, at the same time, exposes the government to so much impotence in one great branch of political power, in opposition to a main intent of the Constitution; and it tends so directly to frustrate one principal object of the situation of a general government, the convenient management of our external concerns, that it cannot but be rejected by every discerning man who will examine and pronounce with sincerity. It is against the principles of sound construction; because these teach us, that every instrument is so to be interpreted, as that all the parts may, if possible, consist with each other, and have their effect. But the construction which is combated would cause the legislative power to destroy the power of making treaties. Moreover, if the power of the executive department be inadequate to the making of the several kinds of treaties, which have been mentioned, there is, then, no power in the government to make them; for there is not a syllable in the Constitution which authorizes either the legislative or judiciary departments, to make a treaty with a foreign nation. And our Constitution would then exhibit the

ridiculous spectacle of a government without a power to make treaties with foreign nations; a result as inadmissible as it is absurd; since, in fact, our Constitution grants the power of making treaties, in the most explicit and ample terms, to the President, with the advice and consent of the Senate. On the contrary, all difficulty is avoided, by distinguishing the province of the two powers, according to ideas which have been always familiar to us, and which were never exposed to any question till the treaty with Great Britain gave exercise to the subtilties of party spirit.

By confining the power to make laws within its proper sphere, and restricting its actions to the establishment of rules for our own nation and those foreigners who come within our jurisdiction—and by assigning to the power of treaty the office of concerting those rules of mutual intercourse and connection, between us and foreign nations, which require their consent as well as our own; allowing to it the latitude necessary for this purpose, a harmonious agreement is preserved between the different powers of the government: that to make laws, and that to make treaties; between the authority of the legislative and the authority of the executive department. Hence,

Though Congress, by the Constitution, have power to lay taxes, yet a treaty may restrain the exercise of it in particular cases. For a nation, like an individual, may abridge its moral power of action by agreement; and the organ charged with the legislative power of a nation may be restrained in its operation by the agreements of the organ of its *federative* power, or power to contract: let it be remembered, that the nation is the *constituent*, and that the executive, within its sphere, is no less the organ of its will than the legislature.

Though Congress are empowered to make regulations of trade, yet they are not exclusively so empowered—but regulations of trade may also be made by treaty; and, where other nations are to be bound by them, must be made by treaty.

Though Congress are authorized to establish a uniform rule of naturalization, yet this contemplates only the ordinary cases of internal administration; in particular and extraordinary cases, those in which the pretensions of a foreign government are to be

managed—a treaty may also confer the rights and privileges of citizens; thus the absolute cession and plenary dominion of a province or district, possessed by our arms in war, may be accepted by the treaty of peace, on the condition that its inhabitants shall, in their persons and property, enjoy the privileges of citizens.

The same reasoning applies to all the other instances of supposed infraction of the legislative authority: with regard to piracies and offences against the laws of nations; with regard to expenditures of money, with regard to the appointment of officers, with regard to the judiciary tribunals, with regard to the disposal and regulation of the national territory and property. In all these cases, the power to make laws and the power to make treaties are concurrent and co-ordinate. The latter, and not the former, must act, where the co-operation of other nations is requisite.

As to what respects the commissioners agreed to be appointed, they are not, in a strict sense, *officers*. They are *arbitrators* between the two countries. Though in the Constitutions, both of the United States and of most of the individual States, a particular mode of appointing officers is designated—yet, in practice, it has not been deemed a violation of the provision to appoint commissioners or special agents for special purposes, in a different mode.

As to the provision, which restricts the issuing of money from the treasury, to cases of appropriation by law, and which, from its intrinsic nature, may be considered as applicable to the exercise of every power of government, it is, in no sort, touched by the treaty. In the constant practice of the government, the cause of an expenditure, or the contract which incurs it, is a different thing from the appropriation for satisfying it. Thus the salary of a public officer is fixed by one law, the appropriation for its payment by another. So, the treaty only stipulates what may be a cause of expenditure. An appropriation by law will still be requisite for actual payment.

As to the disposal and regulation of the territory and property of the United States, this will be naturally understood of

dispositions and regulations purely domestic, and where the title is not disputed by a foreign power. Where there are interfering claims of foreign powers, as neither will acknowledge the right of the other to decide, treaty must directly or indirectly adjust the dispute.

So far then it is from being true, that the power of treaty can extend to nothing upon which, in relation to ourselves, the legislative power may act—that it may rather be laid down as a general rule, that a treaty may do between different nations whatever the legislative power of each may do with regard to itself. The exceptions to this rule are to be deduced from the unfitness and inconvenience of its application to particular cases, and are of the nature of abuses of a general principle.

In considering the power of legislation in its relations to the power of treaty, instead of saying, that the objects of the former are excepted out of the latter, it will be more correct, indeed it will be entirely correct, to invert the rule, and to say, that the power of treaty is the power of making exceptions, in particular cases, to the power of legislation. The stipulations of treaty are, in good faith, restraints upon the exercise of the last-mentioned power. Where there is no treaty, it is completely free to act. Where there is a treaty, it is still free to act in all the cases not specially excepted by the treaty. Thus, Congress is free to regulate trade with a foreign nation, with whom we have no treaty of commerce, in such manner as they judge for the interest of the United States; and they are also free so to regulate it with a foreign nation with whom we have a treaty, in all the points which the treaty does not specially except. There is always, therefore, great latitude for the exercise of the legislative power of regulating trade with foreign nations, notwithstanding any treaties of commerce which may be formed.

The effects of a treaty to impose restraints upon the legislative powers, may, in some degree, be exemplified by the case of the compacts which the legislature itself makes, as with regard to the public debt. Its own compacts are, in good faith, exceptions to its power of action. Treaties with foreign powers, for obvious reasons, are much stronger exceptions.

CAMILLUS.

NO. XXXVIII.—AND LAST.

1796.

The manner in which the power of treaty, as it exists in the Constitution, was understood by the convention in framing it, and by the people in adopting it, is the point next to be considered.

As to the sense of the convention, the secrecy with which their deliberations were conducted, does not permit any formal proof of the opinions and views which prevailed in digesting the power of treaty. But from the *best opportunity of knowing the fact*, I aver, that it was understood *by all*, to be the intent of the provision to give to that power the most ample latitude—to render it competent to all the stipulations, which the exigencies of national affairs might require; competent to the making of treaties of alliance, treaties of commerce, treaties of peace, and every other species of convention usual among nations; and competent, in the course of its exercise for these purposes, to control and bind the legislative power of Congress. And it was emphatically for this reason, that it was so carefully guarded; the co-operation of two-thirds of the Senate, with the President, being required to make any treaty whatever. I appeal for this, with confidence, to every member of the convention—particularly to those in the two houses of Congress. Two of these are in the House of Representatives, Mr. Madison, and Mr. Baldwin: it is expected by the adversaries of the treaty, that these gentlemen will, in their places, obstruct its execution. However this may be, I feel a confidence that neither of them will deny the assertion I have made—to suppose them capable of such a denial were to suppose them utterly regardless of truth. But, though direct proof of the views of the convention on the point, cannot be produced, yet we are not wholly without proof on this head.

Three members of the convention dissented from the Constitution; Mr. Mason, Mr. Gerry, and Mr. Randolph. Among the reasons for his dissent, published by Mr. Mason, we find this clause: "By declaring all treaties supreme laws of the land, the

Executive and Senate have, *in many cases*, an *exclusive power of legislation*, which might have been avoided by proper distinctions with respect to treaties, and *requiring the assent of the house of representatives* where it could be done with safety." This shows the great extent of the power, in the conception of Mr. Mason: *in many cases* amounting to an *exclusive power of legislation;* nor did he object to the extent, but only desired that it should have been further guarded, by certain distinctions, and by requiring, in certain cases, the assent of the House of Representatives.

Among the objections to the Constitution, addressed by Mr. Gerry to the legislature of Massachusetts, we find one to have been, "that treaties of the *highest importance* might be formed by the President, with the advice of two-thirds of a *quorum* of the Senate." This shows his idea of the magnitude of the power; and impliedly admitting with Mr. Mason, the propriety of its extent, he seems only to have desired that the concurrence of the Senate should have embraced two-thirds of the *whole body*, instead of two-thirds of a *quorum*. But how small and how insignificant would the power of treaty be, according to the doctrine lately promulgated, with regard to its constitutional limit?

As to the sense of the community in the adoption of the Constitution, this can only be ascertained from two sources, the writings for and against it, and the debates in the several State conventions—while it was under consideration.

I possess not, at this moment, materials for an investigation, which would enable me to present the evidence they afford; but I refer to them, with confidence, for proof of the fact, that the organization of the power of treaty, in the Constitution, was attacked and defended with an admission on both sides, of its being of the character which I have assigned to it. Its great extent and importance—its effect to control, by its stipulations, the legislative authority, were mutually taken for granted, and upon this basis, it was insisted, by way of objection—that there were not adequate guards for the safe exercise of so vast a power; that there ought to have been reservations of certain rights, a *better* disposition of the power to impeach, and a participation, general or special, of the House of Representatives in the making of treaties.

The reply to these objections, acknowledging the delicacy and magnitude of the power, was directed to show that its organization was a proper one, and that it was sufficiently guarded.*

* The Federalist, No. XLII. has these passages: "The power to make treaties and to receive and send ambassadors, speak their own propriety—both of them are comprised in the articles of confederation, *with the difference only* that the former is *disembarrassed* by the plan of the convention, of an exception by which treaties might be substantially frustrated by regulations of the States." This plainly alludes to the *proviso* which has been cited and commented upon. "It is true that when treaties of commerce stipulate for the nominal appointment of consuls, the admission of foreign consuls may fall within the power of making commercial treaties." And in number LXIV. are these passages: "The power of making treaties is an important one, especially *as it relates to war, peace, and commerce;* and it shou'd not be delegated but in such a mode and with such precautions as will afford the highest security, that it will be exercised by men the best qualified for the purpose, and in the manner most conducive to the public good." "There are few who will not admit, that the affairs of *trade* and *navigation* should be regulated by a system cautiously formed and steadily pursued, and that both our treaties and our laws should correspond with, and be made to promote it." "Some are displeased with it (that is, the power of treaty), not on account of any errors or defects in it, but because, as the treaties, when made, are to have the force of laws, they should be made only by men invested with legislative authority;" "others, though content that treaties should be made in the mode proposed, are averse to their being the *supreme law of the land.*"

It is generally understood that two persons were concerned in the writings of these papers, who, from having been members of the convention, had a good opportunity of knowing its views—and were under no temptation at that time, in this particular, to misrepresent them.

In the *address* and reasons of dissent of the minority of the convention of Pennsylvania to their constituents, they state, that they had suggested the following proposition, among others, for an *amendment* to the Constitution, "That no treaty which shall be directly opposed to the existing laws of the United States in Congress assembled, shall be valid *until* such laws shall be repealed or made conformable to such treaty." This shows that it was understood that the power of treaty in the Constitution extended to abrogating even pre-existing laws of the United States, which was thought exceptionable; while no objection was made to the idea of its controlling future exercises of the legislative power. The same address states, in another place, that the President and Senate "may form treaties with foreign nations, that may control and abrogate the Constitution and laws of the several States."

In the 2d volume of the Debates of the Convention of Virginia, which is the only part I possess there are many passages that show the great extent of the power of treaty in the opinion of the speakers on both sides. As quotations would be tedious, I will content myself with referring to the papers where they will be found, viz., 91, 99, 131, 137, 143, 147, 150, 186. It will, in particular, appear, that

The manner of exercising a similar power under the *confederation* shall now be examined.

To judge of the similarity of the power, it will be useful to quote the terms in which it was granted. They are these: "The United States in Congress assembled, shall have the sole and exclusive right and power of *entering into treaties and alliances, provided that no treaty of commerce* shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subject to, or from prohibiting the importation or exportation of any species of commodities whatsoever." (Article IX.)

It will not be disputed that the words "treaties and alliances" are of equivalent import, and of no greater force than the single word "treaties." An alliance is only a species of treaty, a particular of a general;—and the power of "entering into treaties," which terms confer the authority under which the former government acted, will not be pretended to be stronger than the power "to make treaties," which are the terms constituting the authority under which the present government acts; it follows, that the power, respecting treaties, under the former, and that under the present government, are similar.

But though similar, that under the present government is more comprehensive; for it is divested of the restriction in the provision cited above, and is fortified by the express declaration, that its acts shall be valid notwithstanding the Constitution or laws of any State.—This is evidence (as was the fact) of a disposition in the convention to disembarrass and reinforce the power of treaty. It ought not to pass unnoticed, that an important argument results from the *proviso*, which accompanies the power granted by the confederation as to the natural extent of this power. The declaration that no treaty of commerce shall be

while the opposers of the Constitution denied the power of the House of Representatives to break in upon, or control the power of treaties, the friends of the Constitution did not affirm the contrary, but merely contended, that the House of Representatives might check by its *influence* the President and Senate—on the subject of treaties.

made restraining the legislative power of a State from imposing such duties and imposts on foreigners as their own people are subject to, or from prohibiting the importation or exportation of any species of commodities whatsoever, is an admission, 1. That the general power of entering into treaties, included that of making treaties of commerce, and 2. That without the limitation in the proviso, a treaty of commerce might have been made which would restrain the legislative authority of the State in the points interdicted by that proviso.

Let it not be said, that the proviso, by implication, granted the power to make treaties of commerce, under which Congress afterwards acted; for besides that this is inconsistent with the more obvious meaning of the clause, the first article of the confederation leaves to the States individually every power not *expressly* delegated to the United States in Congress assembled. The power of Congress, therefore, to make a treaty of commerce, and every other treaty they did make—must be vindicated on the ground that the express grant of power to enter into treaties and alliances is a general, which necessarily included as *particulars* the various treaties they have made, and the various stipulations of those treaties.

Under this power, thus granted and defined, the alliance with France was contracted: guaranteeing, in the case of a defensive war, her West India possessions, and when the *casus fœderis* occurs, obliging the United States to make war for the defence of those possessions, and consequently, to incur the expenses of war.

Under the same power, treaties of commerce were made with France, the Netherlands, Sweden, and Prussia.—Besides that every treaty of commerce is necessarily a *regulation* of commerce between the parties, it has been shown in the antecedent comparison of those treaties,* with that lately negotiated, that they produce the specific effects of restraining the legislative power from imposing higher or other duties on the articles of those

* Articles 2d, 3d, and 4th of treaty with France, 2d, 3d, and 20th of treaty with Russia, 2d and 3d of treaty with Holland, 3d and 4th of treaty with Sweden.

nations than on the like articles of other nations, and from extending prohibitions to them which shall not equally extend to other nations the most favored; and thus abridge the exercise of the legislative power to tax, and the exercise of the legislative power to regulate trade.

These treaties likewise define and establish the same case of piracy, which is defined in the treaty with Great Britain. Moreover, the treaty with France, as has been elsewhere shown, with regard to the rights of property, *naturalizes the whole French nation.*

The consular convention with France, negotiated, likewise, under the same power, grants to the consuls of that country, various authorities and jurisdiction, some of a *judicial nature,* which are actual transfers to them of portions of the internal jurisdiction and ordinary judiciary power of the country; the exercise of which our government is bound to aid with its whole strength. It also grants exemptions to French consuls from certain kinds of taxes, and to them, and French citizens, from all personal service; all which are extremely delicate interferences with our internal policy and ordinary jurisdiction.

Under the same power, the treaty with Morocco was formed, which, besides various other regulations relative to war, and several relative to trade, contains the rule, that neither party shall make war without a previous demand of reparation; in restraint of the general discretionary power of Congress to declare war.

Under the same power, the treaty of peace with Great Britain was made. This treaty contains the establishment of a boundary line between the parties, which, in part, is arbitrary, and could not have been predicated upon precise antecedent right. It also prohibits the future confiscation of the property of adherents to Great Britain: declares that no person shall, on account of the part he took in the war, suffer any future loss or damage in his person, liberty, or property, and provides for the release of such persons from confinement, and the discontinuance of prosecutions against them.

It is difficult to conceive a higher act of control, both of the

legislative and judiciary authority, than by this article. These provisions are analogous in principle, to those stipulations which, in the second and ninth articles of the treaty under examination, have given occasion to constitutional objection.

Under the same power, various treaties with Indians, inhabiting the territory of the United States, have been made, establishing arbitrary lines of boundary with them: which determine the right of soil on the one side and on the other. Some of these treaties proceed on the principle of the United States having conquered the Indian country, and profess to make gratuitous concessions to them of the lands which are left to their occupation. There is also a feature of importance common to these treaties, which is the withdrawing of the protection of the United States from those of their citizens, who intrude on Indian laws, leaving them to be punished at the pleasure of the Indians.

Hence it appears, that, except as to the stipulations for appointing commissioners, the treaties made under the confederation, contain all the features, identically or by analogy, which create constitutional objections to the treaty before us: they restrain, in certain instances, the legislative power to lay taxes; they make numerous and important regulations of trade; they confer the benefit of naturalization as to property; they define cases of piracy; they create causes of expenditure; they direct and modify the power of war; they erect, *within the country*, tribunals unknown to our constitutions and laws, in cases to which these are competent—whereas the treaty with Great Britain only provides for the appointment of *arbitrators* in cases to which our tribunals and laws are incompetent; and they make dispositions concerning the territory and property of the United States.

It is true, that some of the treaties made under the former government, though subsequent to the proposing of the articles of confederation to the States, were prior to the final adoption of these articles; but still it is presumable that the treaties were negotiated with an eye to the powers of the *pending* national compact. Those with Great Britain, Sweden, Russia, and Morocco, and the convention with France, were posterior to the completion of that compact.

It may, perhaps, be argued, that a more extensive construction of the power of treaty, in the confederation, than in our present Constitution, was countenanced by the union in the same body of legislative powers with the power of treaty. But this argument can have no force, when it is considered that the principal legislative powers with regard to the objects embraced by the treaties of Congress, were not vested in that body, but remained with the individual States. Such are the power of *specific* taxation, the power of regulating trade, the power of naturalization, &c.

If in theory the objects of legislative power are excepted out of the power of treaty, this must have been equally, at least, the case with the legislative powers of the State governments as with those of the United States. Indeed the argument was much stronger for the objection, where distinct governments were the depository of the legislative power, than where the same government was the depository of that power and of the power of treaty. Nothing but the intrinsic force of the power of treaty could have enabled it to penetrate the separate spheres of the State governments. The practice under the confederation for so many years, acquiesced in by all the States, is, therefore, a conclusive illustration of the power of treaty, and an irresistible refutation of the novel and preposterous doctrine, which impeaches the constitutionality of that lately negotiated. If the natural import of the terms used in the Constitution were less clear and decisive than they are, that practice is a commentary upon them, and fixes their sense. For the sense in which certain terms were practised upon in a prior constitution of government, must be presumed to have been intended, in using the like terms in a subsequent constitution of government for the same nation.

Accordingly, the practice under the present government before the late treaty, has corresponded with that sense.

Our treaties with several Indian nations regulate and change the boundaries between them and the United States. And in addition to compensations in gross, they stipulate the payment of certain specific and perpetual annuities. Thus a treaty in August, 1790, with the Creeks (article 5) promises them the yearly sum of one thousand five hundred dollars. And similar features are

found in subsequent treaties with the Six Nations, the Cherokees, and the North Western Indians. This last has *just* been ratified by the *unanimous voice* of the Senate. It stipulates an annuity of 9500 dollars—and relinquishes to the Indians, a large tract of land which they had, by preceding treaties, ceded to the United States.

Hence we find that our former treaties under the present government, as well as one subsequent to that under consideration, contradict the doctrine set up against its constitutionality—in the important particulars of making dispositions concerning the territory and property of the United States, and binding them to raise and pay money. These treaties have not only been made by the President, and ratified by the Senate, without any impeachment of their constitutionality, but the House of Representatives has heretofore concurred, and without objection, in carrying them into effect, by the requisite appropriation of money.

The consular convention with France stands in a peculiar predicament. It was negotiated under the former government, and ratified under the present; and so may be regarded as a treaty of both governments, illustrative of the extent of the power of treaty in both. The delicate and even the extraordinary nature of the provisions it contains, have been adverted to. Though all reflecting men have thought ill of the propriety of some of them, as inconveniently breaking in upon our interior administration, legislative, executive and judiciary; only acquiescing in them from the difficulty of getting rid of stipulations entered into by our public agents under competent powers, yet no question has been heard about their constitutionality. And Congress have, by law, assisted their execution by making our judicial tribunals, and the public force of the country, auxiliary to the decrees of the foreign tribunals which they authorize within our territory.

If it should be said, that our Constitution, by making all former treaties and engagements as obligatory upon the United States, under that Constitution, as they were under the confederation, rendered the ratification of the convention a matter of

necessity—the answer is, that either the engagements, which it contracted, were already conclusive, or they were not—if the former, there was no need of a ratification; if the latter, there was no absolute obligation to it. And, in every supposition, a ratification by the President, with the consent of the Senate, could have been predicated only upon the power given in the present Constitution in relation to treaties; and to have any validity, must have been within the limit of that power.

But it has been heretofore seen that the inference from this instrument is no less strong, if referred to the power under the confederation, than if referred to the power under the present Constitution.

How happens it, that all these invasions of the Constitution, if they were such, were never discovered, and that all the departments of the government, and all parties in the public councils should have co-operated in giving them a sanction? Does it not prove that all were convinced, that the power of treaty, applied in our exterior relations to objects, which, in the ordinary course of internal administration and in reference to ourselves, were of the cognizance of the legislative power? and particularly that the former was competent to bind the latter in the delicate points of raising and appropriating money? If competent to this, what legislative power can be more sacred, more out of its reach?

Let me now ask (and a very solemn question it is, especially for those who are bound by oath to support the Constitution), has it not been demonstrated that the provisions in the treaty are justified by the true and manifest interpretation of the Constitution—are sanctioned by the practice upon a similar power under the confederation, and by the practice in other instances under the present government?

If this has been demonstrated, what shall we think of the candor and sincerity of the objections which have been erected on the basis of a contrary supposition? Do they not unequivocally prove, that the adversaries of the treaty have been resolved to discredit it by every artifice they could invent? That they have not had truth for their guide, and consequently are

very unfit guides for the public opinion, very unsafe guardians of the public welfare?

It is really painful and disgusting to observe sophisms so miserable as those which question the constitutionality of the treaty, retailed to an enlightened people, and insisted upon with so much seeming fervency and earnestness. It is impossible not to bestow on sensible men, who act this part, the imputation of hypocrisy. The absurdity of the doctrine is too glaring to permit even charity itself to suppose it sincere. If it were possible to imagine that a majority in any branch of our government, could betray the Constitution, and trifle with the nation, so far as to adopt and act upon such a doctrine—it would be time to despair of the republic.

There would be no security at home, no respectability abroad. Our constitutional charter would become a dead letter. The organ of our government for foreign affairs would be treated with derision whenever he should hereafter talk of negotiation or treaty. May the great Ruler of nations avert from our country so grievous a calamity! *

CAMILLUS.

EXPLANATION.

November 11th, 1795.

A very virulent attack has recently been made upon the President of the United States, the present Secretary of the Treasury and myself, as his predecessor in office, on the ground of extra payments to the President on account of his salary.

* It is very probable that a treaty with Algiers is now on its way to the United States, which may be expected to contain similar stipulations with that with Morocco. This treaty, which will have cost the United States no trifling sum, and will be of very great value to our trade, must equally fall, on the doctrine which I oppose.

The charges against all the three are no less heinous than those of intentional violation of the Constitution, of the law, and of their oaths of office. I use the epithet *intentional*, because though not expressly used in the terms of the attack, it is implied in every line of it, since an involuntary error of construction, if that could ever be made out, would not warrant the imputation "of *contemning* and *despising every principle* which the people have established for the security of their rights, of *setting at defiance* all *law* and *authority*, and of *servile submission* and compliance with the *lawless will* and pleasure of a President."

Were considerations personal to myself alone to be considered, the present attempt would be treated with no greater attention than has been shown to all the anonymous slanders by which I have been so long and so implacably persecuted. But convinced by a course of observation for more than four years, that there exists in this country an unprincipled and daring combination, to obstruct by any means, *which shall be necessary and can be commanded, not short even of force*, the due and efficient administration of the present government, to make our most important national interests subservient to those of a foreign power, and as means to these ends to destroy, by calumny and misrepresentation, the confidence of the people in the truly virtuous men of our country; and to transfer it, with the power of the state, to ambitious hypocrites and intriguing demagogues, perhaps corrupted partisans; perceiving likewise, that this infatuated combination, in the belief that the well-earned esteem and attachment of his fellow-citizens towards the Chief Magistrate of the United States, is the principal remaining actual obstacle to the execution of their plan, are making the most systematic efforts to extinguish those sentiments in the breasts of the people; I think it a duty to depart from my general rule of conduct, and to submit to the public with my name, an explanation of the principles which have governed the Treasury Department on the point in question.

I shall state in the first place, that the rule with regard to expenditures and appropriations which has *uniformly* regulated the practice of the department is this, (viz.,) *to issue no money*

from the Treasury, but for an object for which there was a law previously passed making an appropriation, and designating the fund from which the money was to arise; but there being such a law, and an adequate fund to support the expenditure, it was deemed justifiable, as well before as after the service was performed, or the supply obtained, for which the appropriation was designed, to make *disbursements from the Treasury for the object, if it appeared safe and expedient so to do.* If made before, it was an advance or *anticipation*, for which the party was charged, and held accountable till exonerated by the performance of the service, or the furnishing of the supply. If *afterwards*, it was a *payment*, and went to some general head of account as such.

Thus, if a sum was appropriated for provisions for the army for a particular year, it was common to make *advances* on account to the contractors, long before the supplies were furnished. If the law was passed in one year for the next, there would be no hesitation to make the advance immediately after the passing of the law, and before the year to which the appropriation was applicable had commenced. So also sums would be furnished to the Department of War, in anticipation of the monthly pay of the officers and soldiers, and advances on account of pay, in particular circumstances, and for good reasons, would be actually made by that department to the officers and soldiers. And so likewise advances have been made for the use of the President and the members of both houses of Congress, in anticipation of their respective compensations.

It will without difficulty be comprehended, that this practice of the Treasury has in some cases been essential to the due course of the public service.

Every good judge will be sensible that from the insufficiency of individual capitals to such large advances, as the supplies of an army require, it was indispensable to the obtaining of them, that anticipations from the Treasury would enable the Contractors to do, what otherwise they would have been unable to do; and that these anticipations must also have had the effect of procuring the supplies on cheaper terms to the United States.

When is is answered to us, that the army has operated for several years past at several hundred miles distance from the seat of government; and a considerable part of the year, from the rudeness of the country, and obstructions of the waters, it is impracticable to transmit moneys to the scenes of payment,—it will be perceived that without advances from the Treasury in anticipation of the pay, not only a compliance with the engagement of the government would have been impossible; but the troops must have been always left most unseasonably in arrear.—In June, 1794, Congress passed a law, declaring that the army should in future be paid in such a manner as that the arrears should not exceed two months. Compliance with this regulation renders anticipations a matter of physical necessity, yet that law gave no special authority for the purpose.

A particular case, by way of example, in which, different from general rules, advances or anticipations in the war department are necessary, respects the recruiting service. The officers, who are for a long time distant from their corps, require the accommodation of an advance of pay to be able to discharge their duty. Towards the possibility of enlisting men, it is indispensable they should carry with them the bounty money; another, upon conjecture of what may be done, and with the possibility that from not being able to obtain the men the ultimate expenditure may not take place. This instance will suggest to reflection an infinite number of cases in the course of service in which a disbursement from the Treasury must precede the execution of the object, and may exceed the sum finally requisite for it.

These cases indicate the expediency and even necessity of the construction which has regulated the practice of the Treasury. And it might be shown, if necessary, that it is analogous to the practice under the other government of the United States; and under other goverments; and this too when the theory of expenditure equally is, as expressed in our Constitution, that no money shall be expended, but *in consequence* of an appropriation by law.

It remains to see whether this rule of conduct, so indispensable in the practice of the department, be permitted by a fair interpretation of the Constitution and the laws.

The general injunction of the Constitution (article i., § ix.) is, that "no money shall be drawn from the Treasury but *in consequence* of appropriations made by law."

That clause appears to me to be exactly equivalent to this other clause—"No money shall be drawn from the Treasury, but for which there is an appropriation made by law;" in other words, before money can legally issue from the Treasury for any purpose, there must be a law authorizing an expenditure, and designating the object, and the fund. Then such a law is passed. This being done, the disbursement may be made consistently with the Constitution, either by way of advance, or anticipation, or by way of payment. It may precede or follow the service, supply, or other object of expenditure. Either will equally satisfy the words "in consequence of," which are not words of strict import, but may be taken in several senses—in one sense, *that* is "*in consequence*" of a thing which being followed upon it, follows it in order of time. A disbursement must be either an *advance*, or *anticipation*, or a *payment*. 'Tis not presumable, that the Constitution meant to distinguish between these two modes of disbursement. It must have intended to leave this matter wholly to convenience.

The design of the Constitution in this provision was, as I conceive, to secure these important ends,—that the *purpose*, the *limit*, and the fund of every expenditure should be ascertained by a previous law. The public security is complete in this particular, if no money can be expended, but for *an object*, to an extent, and *out of a fund*, which the laws have prescribed.

Even in cases which affect only individual interests, if the terms of a law will bear several meanings, that is to be preferred, which will best accord with convenience. In cases that concern the public, this rule is applicable with still greater latitude. Public convenience is to be promoted; public inconveniences to be avoided. The business of administration requires accommodation to so great a variety of circumstances, that a rigid construction would in countless instances arrest the wheels of government. It has been shown that the construction that has been adopted at the Treasury is in many cases essential in practice. This inclines the scale in favor of it,—the words "in consequence of," admitting of various significations.

The practice of the legislature as to appropriation laws favors this construction.

These laws are generally distinct from those which create the cause of expenditure. Thus the act which declares, that the President shall be allowed twenty-five thousand dollars per annum; that which declares that each Senator and Representative shall be entitled to so much per day; that which determines that each officer and soldier shall have so much per month &c., neither of these acts is an act of appropriation. The Treasury has not considered itself authorized to expend a single cent upon the basis of any such act; regarding it merely as constituting a claim upon the government for a certain compensation, but requiring, prior to an actual disbursement for such claim, that a law be passed, authorizing the disbursement out of a specified fund. This is what is considered as the law by which the appropriation is made, from which results to the public a double security.

Hence every year a particular act (sometimes more than one) is passed, appropriating certain sums for the various branches of the public service, and indicating the funds from which the moneys are to be drawn. The *object*, the *sum*, and the fund, are all that are to be found in these acts. They are commonly, if not universally, silent as to any thing further.

This, I regard as constructive of the clause in the Constitution. The appropriation laws are in execution of that provision, and fulfil all its purposes, and they are silent as to the distinction between anticipation and payment; in other words, as to the manner of disbursement.

Hence I conclude, that if there exist a law appropriating a certain sum for the salary of the President, an advance upon that sum in anticipation of the service, is as constitutional, as a payment after the service has been performed. In other words, that the advance of a quarter's salary at the beginning of a quarter, is as much warranted by the Constitution, as the payment of it at the end of a quarter.

It is in this sense that the present Secretary of the Treasury has affirmed, that "not one dollar has at any time been advanced for the use of the President, for which there was not an existing

appropriation." He did not mean to say that no money had been advanced in anticipation of the service, for the fact is otherwise; but nothing is more true than that the sums disbursed were within the limits of the sums appropriated. If there was an excess at the end of one year, there had been a previous appropriation for a succeeding year, upon which that excess was an advance.

It is objected to this practice, that the death of the party, between the advance to him and the expiration of an equivalent term of service, by superseding the object of the advance, would render it a misexpenditure of so much money; and therefore a violation of the Constitution.

I answer, that the same casualty might have the same effect in other cases, in which it would be against common sense to suppose that an advance might not be made with legality and propriety. Suppose, for example, a law was to be passed, directing a given quantity of powder to be purchased for public use, and appropriating a definite sum for the purchase; and suppose intelligence brought to the Secretary of the Treasury, that the quantity required could be procured for prompt payment at Boston? It cannot in such case be doubted, that the sum appropriated might legally be advanced to an agent to proceed to Boston to make the purchases. Yet, that agent might die, and the money never be applied according to its destination, or the desired quantity might be procured for a less sum, and a balance remain in his hands. In either case, this would be money disbursed, which was not applied to the object of the law. In the last case, there is no final object for the disbursement, because the balance is a surplus. This proves that the possibility of a failure, or falling short of the object for which an advance is made, is not an objection to its legality. Indeed, the consequence is a possible one in every case of an *anticipation*, whether to contractors, or to other public agents, for a determinate or an indeterminate purpose.

The only consequence is, that the sums unapplied must be accounted for, and refunded. The distinction here again is between an *advance* and a *payment*. More cannot certainly be finally *paid*, than is equal to the object of an appropriation,

though the sum appropriated exceed the sum necessary. But more may be advanced, to the full extent of the appropriation, than may be ultimately exhausted by the object of the expenditure, on the condition, which always attends an advance, of accounting for the application, and refunding an excess. This is a direct answer to the question, whether more can be *paid* than is necessary to satisfy the object of an appropriation. More cannot be *paid*, but more may be advanced on the accountability of the person to whom it is advanced.

But risk of loss to the public may attend this principle? This is true, but it is as true in all the cases of advances to contractors, &c., as in those of advances upon salaries and compensations. Nor does this point of risk affect the question of legality. It touches merely that of a prudent exercise of discretion. When large sums are advanced, it is usual to obtain security for their due application, or for indemnification. This security is greater or less according to the circumstances of the parties to whom the advances are made. When small sums are advanced, especially, if for the purposes quickly fulfilled, and to persons who are themselves adequate sureties, no collateral security is demanded. The head of the department "is responsible to the government, for observing proper measures, and taking proper precautions." If he acts so as to incur justly the charge of improvidence or profusion, he may be dismissed, or punished, according to the nature of his misconduct.

But the principle which is set up, would (it is said) be productive of confusion, distress, and bankruptcy at the Treasury, since the appropriation for the support of government is made payable out of the accruing duties of each year; and an *established* right in the officers of government to claim their compensations, which amount to several hundred thousand dollars per annum, either on the first day of the year, or on the first day of a quarter, before the services were rendered, would create a demand at a time when there might not, and possibly would not, be a single shilling in the Treasury, arising out of that appropriation, to satisfy it. These ideas with regard to the administration of the fund, are very crude and incorrect, but it would complicate the subject to go into the development.

It is not pretended that there is an *established right* in the officers to claim their salaries by *anticipation*, at the beginning of a year, or at the beginning of a quarter. No such right exists. The performance of the service must precede the right to demand payment. But it does not follow, that because there is no right in the officer to demand payment, it may not be allowable for the Treasury to advance upon account for good reasons. A discretion of this sort in the head of the department, can, at least, involve no embarrassments to the Treasury, nor the formidable evils indicated; for the officer who makes the advance, being himself the judge, whether there is a competent fund, and whether it can be made with convenience to the Treasury, he will only make it when he perceives that no evil will ensue.

Let me recur to the example of advances to contractors for supplying the army. Suppose that in the terms of contract, certain advances were stipulated and made, but it turned out nevertheless that the contractor, disappointed in the funds on which he had relied, could not execute his contract without further advances. Here there would be no right on his part to demand such further advances; but there would be a discretion in the Treasury to make them. This is the example of a discretion to do what there is not a right to demand. The existence of this discretion can do no harm, because the head of the Treasury will judge whether the state of it permits the required advances. But it is essential, that the discretion should exist, because otherwise there might be a failure of supplies, which no plan that could be substituted might be able to avert.

Yet the discretion is in neither case an arbitrary one; it is one which the head of the department is responsible to exercise with a careful eye to the public interest and safety. The abuse of it, in other words, the careless or wanton exercise of it, would be a cause of dismission for incapacity, or of punishment for malconduct.

Thus, advances on account of salaries or to contractors for procuring public supplies, might be carried so far, and so improvidently managed, as to be highly culpable and justly punishable: but this is a different question from the violation of Constitution or law.

In all the cases it is a complete answer to the objection of embarrassment to the Treasury, that not the will of the parties, but the judgment of the head of the department is the rule and measure of the advances which he may make, within the bounds of the sums appropriated by law.

I consider the law which has been cited with regard to the pay of the army, as a legislative recognition of the rule of practice at the Treasury. The legislature could not have been ignorant that it was impracticable at certain seasons of the year to convey the money to the army to fulfil their injunction, without an advance from the Treasury before the pay became due. They presuppose a right to make this advance, and enjoin that the troops shall not be left more than two months in arrear. The origin of this law enforces the observation. It is known that it passed in consequence of a representation that the pay of the army was left too long in arrear, and it was intended to quicken the measures of payment. No person in either house of the legislature, I believe, doubted that there was power to precede the service by advances so as to render the payment even more punctual than was enjoined.

Indeed such advances when the army operated at a distance, were necessary to fulfil the contract with the army. It became due monthly, and in strictness of contract, was to be made at the end of each month,—a thing impossible, unless advanced from the Treasury before it became due. No special authority was ever given for this purpose to the Treasury, but it appears to have been left to take its course on the principle that the disbursement might take place as soon as there was an appropriation, though in anticipation of the term of service.

The foregoing observations vindicate, I trust, the construction of the Treasury as to the power of making disbursements in anticipation of services and supplies, if there has been a previous appropriation by law of the object, and if the advances never exceed the amount appropriated; and at the same time evince that this practice involves no violation of the constitutional provisions with respect to appropriations.

I proceed to examine that clause which respects the pay of

the President. It is in these words: "The President shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them."

I understand this clause as equivalent to the following: "There shall be established by law for the services of the President a *periodical compensation*, which shall not be increased nor diminished during the term for which he shall have been elected, and neither the United States nor any State shall allow him any emolument in addition to his periodical compensation."

This will, I think, at first sight appear foreign to the question of a provisional advance on account of the compensation periodically established by law for his services.

The manifest object of the provision is to guard the independence of the President from the legislative control of the United States or of any State, by the ability to withhold, lessen, or increase his compensation.

It requires that the law shall assign him a definite compensation for a definite time. It prohibits the legislature from increasing or diminishing this compensation during any term of his election, and it prohibits every State from granting him an additional emolument. This is all that the clause imports.

It is therefore satisfied as to the United States, when the legislature has provided that the President shall be allowed a certain sum for a certain term of time; and so long as it refrains from making an alteration in the provision. All beyond this is foreign to the subject.

The legislature having done this, an advance by the Treasury in anticipation of the service cannot be a breach of the provision. 'Tis in no sense an additional allowance by the United States. 'Tis a mere advance or loan upon account of the established periodical compensation; will legal ideas, or common parlance, warrant the giving the denomination of additional compensation, to the mere anticipation of the term of an established allowance? If they will not, 'tis plain such an advance is no breach of this part of the Constitution.

If the clause is to be understood literally, it leads to an absurdity. The terms are, "The President shall *at stated times receive*," &c.; and again, "he shall not receive within that period," &c.

His allowance is at the rate of 25,000 dollars per annum, 6,250 dollars quarter yearly. Suppose at the end of a year an arrear of 5000 dollars was due to him, which he omits to receive till some time in the succeeding year, and in the succeeding year actually receives that balance with his full salary for the last year. 'Tis plain, that he would not have received in the whole more than he was allowed by law, and yet in the *stated* period of one year he would have received 30,000 dollars, five thousand more than his salary for the year. In a literal sense, then, constitutional provision as to *actual* payment would not have been complied with; for within the first *stated period* he would *not have received* the compensation allotted, and within the second of them he *would have received* more. In a literal sense it would be necessary to make the payment at the precise day, to the precise amount, neither more or less, which as a general rule the indispensable forms of the Treasury render impossible. It follows that actual receipt or payment are not the criterion—but the absolute definitive allowance by law. An advance beforehand, or a payment afterwards, are equally consistent with the true spirit and meaning of this part of the Constitution.

Let us now see if the construction of the Treasury violates the law which establishes the President's compensation.

The act of the 29th of September, 1789, allows to the President at the rate of 25,000 dollars per annum, to commence from the time of his entering on the duties of his office, and *to be paid quarterly out of the Treasury of the United States.*

The question is, what is to be understood from these words, "*to be paid quarterly out of the Treasury of the United States?*"

The conception of the Treasury has been, that these words, as used in this and in the analogous cases, were meant to define the time when the right of an individual *to the compensation earned* became absolute, not as a command to the Treasury *to issue the money at a precise day and no other.*

As mentioned above, the indispensable forms of the Treasury, in compliance with the law establishing the department, and to secure a due accountability, make it impracticable to pay at the day; and if expressions of the kind in question are to be construed literally, and as a positive injunction to the Treasury to issue the money at the period defined, it will be as much a breach of the law to pay afterwards as to advance beforehand.

The position that an after payment would be a breach of the law, will hardly be contended for; and if not, the alternative seems to be the construction adopted by the Treasury. Such expressions denote simply, that at certain periods individuals acquire a perfect right to particular sums of money for their services, which it becomes a matter of course to pay; but they are not obliged to receive it at the day, nor is the Treasurer restrained from paying it afterwards, or from anticipating by way of loan, if there are adequate reasons for such anticipation.

It is not true, as alleged, that the invariable practice of the Treasury as to *compensations* for services differs in principle from what was done in the case of the President.

Instances to the contrary have been stated. As to what regards the army, there has been sufficient explanation.

But it will be useful to be more particular as to the course which has been pursued with reference to the two houses of Congress.

The law that regulates their compensations (passed the 29th of September, 1789) allows to each member a compensation of six dollars *for every day* he shall attend the House to which he belongs, together with six dollars for every twenty miles of distance to and from his place of residence; and directs that the compensation which shall be due shall be certified by the President of the Senate or Speaker of the House of Representatives, and shall be paid as public accounts are paid out of the Treasury.

By an arrangement between each House and the Treasury Department, the course actually pursued has been as follows:

Certain gross sums, usually at the commencement of each session, and from time to time afterwards, have been advanced from the Treasury at request, to the President of the Senate for

the members of the Senate, to the Speaker of the House of Representatives for the members of that House, on account, and frequently in anticipation of their accruing compensations. The President of the Senate in the Senate, and the Speaker of the House of Representatives in that House, disbursed the moneys to the individuals, and afterwards, upon the close of each session, settled an account at the Treasury, accompanied with the certificates required by the law, and the receipts of the members, which were examined, adjusted, and passed, as other public accounts.

Whether there were any advances actually made to the members, in anticipation of their compensations, was a point never discussed between the Treasury and the presiding officers of the two Houses with whom the money was deposited. But I understand that examples of such advances did exist in relation to the House of Representatives. The fact is however immaterial to the point in issue; that must be tested by the *times* of the *advances from the Treasury;* and it is certain that these were usually made in *anticipation of compensations to grow due;* and it is also certain that the course was well understood by both Houses, and is exhibited by the accounts of the Treasurer laid before them in each session.

If, therefore, the advances for the President were unconstitutional and illegal, those for both Houses of Congress were equally so; and if the President be chargeable with a violation of the Constitution, of the laws, and of his oath of office, on account of extra advances to his secretaries, whether with or without his privity, the members of both Houses of Congress, without exception, have been guilty of the same crimes, in consequence of the extra advances, with their privity, to the presiding officers of their respective Houses. A distinction may possibly be attempted to be taken in the two cases from this circumstance, that the law which allots the compensation of the members of the two Houses does not use the words "to be paid *every day* out of the Treasury," while that which establishes the President's compensation does use the terms "to be paid quarterly out of the Treasury." But this distinction would be evidently a cavil.

When a law fixes the term of a compensation, whether per day, per month, per quarter, or annum, if it says nothing more, it is implied that it is payable at each epoch out of the Treasury, in the same sense as if this was expressly said. This observation applies as well to the monthly pay of the army, as to the daily pay of Congress.

Having examined the question as it stands upon the Constitution and the laws, I proceed to examine the course of the fact.

But previous to this, I shall take notice of one point about which there have been doubts—and which it is not within my present recollection, whether definitively settled or not by the accounting officers of the department. It respects the time of the commencement of the President's compensation. The law establishing it refers to the time of his entering upon the duties of his office, but without defining that time.

When in a constitutional and legal sense did the President enter upon the duties of his office?

The Constitution enjoins that before he enters upon the execution of his office he shall take a certain oath which is prescribed. This oath was not taken till the 30th of April, 1789. If we date the entrance upon the duties of his office at the time of taking this oath, it determines the epoch to be the 30th of April, 1789.

The notice of the arrangement which was made for the payment of the members of Congress was twofold. It was to obviate embarrassment to them by facilitating and accelerating the receipt of their compensations, and to avoid an inconvenient multiplication of adjustments, entries, warrants, and payments. The theory of the provision admitted of as many Treasury settlements, entries, warrants, and payments, each day, as there were members in both Houses.

But there is room for another construction. The 3d of March, 1789, is the day when the term for which the President, the Vice-President, and the members of the Congress were first elected and was deemed to commence. The Constitution declares, that the President shall hold his office for four years;

and it is presumable that the clause respecting his compensation contemplates its being for the whole term for which he is to hold his office. Its object may otherwise be evaded.

It is also, I believe, certain, that the President may execute his office and do valid acts as President without previously taking the oath prescribed. Though in so doing, if voluntarily, he would be guilty of a breach of the Constitution, and would be liable to punishment. The taking the oath is not, therefore, necessarily, the criterion of entering upon the duties of office.

It is a fact, if I remember right, that the President was at New-York, the place assigned for the first meeting of the government, on the 3d of March, 1789, which might be considered as an entrance upon the duties of his office: though from the delays which attended the meeting of Congress, the oath was deferred till the 30th of April following.

On the strength of these facts, it may be argued, that by force of the Constitution, dating the commencement of the President's term of service on the 3d of March, 1789, the law respecting his compensation ought to be considered as referring to that period, for a virtual entrance upon the duties of his office.

In stating this construction, I must not be understood to adopt it. I acknowledge that the other, as most agreeable to the more familiar sense of the law terms, has appeared to me preferable, though I had reason to believe that an important officer of the government (I do not mean the President) once thought otherwise. The result, in point of fact, will vary, as the one or the other is deemed the true construction.

I return to an examination of the course of the transaction.

Authentic statements which have been published, with some supplementary ones received from the Treasury upon the occasion, exhibit the following results.

1st. Result. The sums advanced for the use of the President from the Treasury, have never exceeded the sums previously appropriated by law: though they have sometimes exceeded, sometimes fallen short, of the sums actually due for services. This is thus explained:

An Act of the 29th of September, 1789, appropriated for the compensation of the President, $25,000.

The sums to the 8th of April, 1790, and charged to this appropriation, are	$25,000
An Act of the 26th of March, 1790, appropriated for the same purpose.	25,000
The sums advanced from May 4th, 1790, to the 28th February, 1791, and charged to this appropriation, . .	25,000
An Act of the 11th February, 1791, appropriated for the same purpose	25,000
The sums advanced from the 28th February, 1791, to 27th of December in the same year, and charged to this appropriation, are	22,150
Excess of appropriation beyond the advances, . .	2,850
An Act of the 23d December, 1791, appropriated for the same purpose	25,000
The sums advanced from the 3d January, 1792, to the 15th January, 1793, and charged to this appropriation, are	25,000
An Act of the 28th February, 1793, appropriates for the same purpose	25,000
The sums advanced from the 9th March, 1793, to 27th of December in the same year, and charged to this appropriation, are	25,000
An Act of the 14th of March, 1794, appropriates for the same purpose	25,000
The sums advanced from the 17th of March, 1794, to the 1st of January, 1795, and charged to the same appropriation, are	25,000
An Act of the 2d of January, 1795, appropriated for the same purpose	25,000
The sums advanced from the 12th of January, 1795, and prior to the 1st of October in the same year, and charged to this appropriation, are	12,500
	12,500

Excess of appropriation beyond advances, on the 1st of August, 1795, ...	$12,500
Excess of appropriation on the Act of the 11th of February, 1791, ...	2,850
Total excess of appropriation beyond advances, to the 1st of October, 1795, ...	$15,350

The residue of the proposition is illustrated by the quarterly statement of salary and advances at foot.

2d Result. The Treasury has never been in advance for the President beyond the sums actually accrued, and due to him for services to the amount of one quarter's salary. The largest advance at any time is $6,154. A quarter's salary is, $6,250. Deduct the sums at certain times in arrear from those at other times in advance, the average of the advances for the whole term of his service is about

The particulars of this result appear in the statement at foot. This statement is digested by a quarter of the calendar year, which is the established course of the Treasury, and a course essential to the order of its affairs; that is to say, it is essential there should be certain fixed periods to which the ordinary stated disbursements are referred, and in conforming with which the accounts of the Treasury are kept.

3d Result. On the 1st of October, 1795, there was actually due to the President, for his compensation, over and above all advances for his use, the sum of $846. This likewise appears from the statement at foot, and entirely refutes the malevolent suggestion which has appeared, of an accumulation of advances to twelve or fifteen thousand dollars.

4th Result. The sums advanced for the President prior to the commencement of the term of his second election, the 3d of March, 1793, fall short of the sums appropriated for his compensation, $2,850. Thus:

The aggregate of the sums appropriated for four years, from the 29th of September, 1789, to the 23d of	

December, 1791, inclusively is	$100,000
The amount of all the sums advanced prior to the 3d of March, 1793, is	97.150
Excess of appropriations beyond advances, . . .	$2,850

It is nevertheless true, that not only have there been frequent anticipations of the President's salary, as appears more particularly in the statement at foot, but, counting from the 30th of April, 1789, as the commencement of his compensation, the sums advanced for his use prior to the 3d of March, 1793, the expiration of his first term of election, exceed those actually due up to that period, by $1108 34.

If, on the contrary, the construction were adopted which dates his compensation on the 4th of March, 1789, there would have been a balance due to him on the 4th of March, 1795, of 2,850 dollars.

But proceeding on the first supposition, the whole question still turns upon the legality of the advances. If it was legal to make him an advance, in anticipation of his salary, within any period of his election—within one quarter, on account of a succeeding quarter, it was equally legal to do it within one year, on account of a succeeding year; and within one term of an election, on account of a succeeding term. The only inquiry would be, in either case, will the sum advanced be within the bounds of the sums before that time appropriated?—It has been seen that the sums appropriated for the first four years of service exceeded those advanced prior to the commencement of the second period of election by 2,850 dollars: besides this, on the 28th of February, 1793, there was a further appropriation of 25,000 dollars—so that at the beginning of the second term the total appropriations exceeded the total disbursements by 27,850 dollars.

Thus has it been shown that the advances for the use of the President have been governed by a rule of construction which has obtained in analogous cases, or more truly, which has regulated the general course of disbursements from the Treasury—a rule which, I trust, has been demonstrated to be consonant with the Constitution and the laws.

It is requisite to inquire a little further, whether there has been any improper use, or rather abuse of the discretion which is contended for; for here there is likewise an unquestionable responsibility. It is seen, that the advances have at no time equalled one quarter's salary.

I ask, was it unreasonable or unfit, if constitutional and legal, to afford the President of the United States an accommodation of this extent?

I pledge my veracity, that I have always understood, and to this moment I have good reason to be satisfied, that the expenses of the President, those of his household and others, incident to his official situation, have fully equalled, if not on some occasions exceeded, the allowance made to him by the United States. Under this conviction especially, how could the head of a department hesitate, by so small an accommodation as the advance of less than a quarter's salary, to enable the President of the United States to meet his expenses as they accrued, without being obliged to encroach upon his own private resources, or to resort to the expedient of borrowing, to defray expenses imposed upon him by public situation? I knew that no possible risk could attend the advance, little considerable as it was. The estate of the President was answerable in case of death, or other premature vacancy, for the indemnification of the government.

Reasons of a peculiar kind forbade hesitation. The scale of expense was such as to render the income even of what is deemed a large landed property in this country a slender auxiliary—without an advance from the Treasury, it was not impossible borrowing might be necessary. Was it just to compel the President to resort to that expedient, for a purpose in fact public, at his private expense? Was it for the dignity of the nation that he should have been exposed to a necessity, an embarrassment of this sort?

My judgment and feelings answered both these questions in the negative. I entertained no doubt of the constitutionality and legality of the advance, and I thought the making of it due to the situation—due to propriety—due to every public consideration connected with the subject. I can never regret it.

How far the President was privy to the course of advances, I cannot say: but it is certain they have been all made to his private secretaries upon a general arrangement, and not by special direction from him. And I think it proper to add, that very early in the day, and probably before any was made, on an application to Mr. Lear for a sum which would constitute an advance, he qualified it by this observation: "If in your opinion it can be done with legality and perfect propriety." I answered that I had no doubt of either. I shall not attempt to assume any greater responsibility in this transaction than belongs to me, but I have been accustomed to think that the responsibility for the due and regular disbursement of moneys from the Treasury lies exclusively with the officers of the department, and that, except in a very palpable and glaring case, the charge of blamable participation could not fall on any other person.

As between the officers of the Treasury, I take the responsibility to stand thus. The Secretary and Comptroller, in granting warrants upon the Treasury, are both answerable for their legality. In this respect, the Comptroller is a check upon the Secretary. With regard to the expediency of an advance, in my opinion, the right of judging is exclusively with the Head of the department. The Comptroller has no voice in this matter. So far, therefore, as concerns legality in the issues of money, while I was in the department, the Comptroller must answer with me: so far as a question of expediency, or the due exercise of discretion, may be involved, I am solely answerable. And uniformly was the matter so understood between successive comptrollers and myself. Also it is essential to the due administration of the department, that it should have been so understood.

I have stated my reasons for considering the advances made, for the use of the President, constitutional, legal, and proper. But I pretend not to infallibility: 'tis possible I may have erred, but to convert error into guilt, it must be supposed to have been wilful. To suppose it wilful, it is necessary to trace it to some interested or sinister motive. If any appear, let it be pointed out. It is not common for men to commit crimes without some adequate inducement.

What criminal inducement would have probably influenced the rule of construction as to advances which has been stated to have been adopted and acted upon at the Treasury? What criminal inducement particularly could have led to the application of this rule to the President's compensation, in so restricted a form as never to equal one quarter's salary? Who in his senses will believe that the President would consciously have hazarded the imputation of violating the Constitution, the laws, and his oath of office, by imposing on the officers of the Treasury the necessity of making him so paltry an advance, falsely and ridiculously called a donation? Who will believe that those officers would have consented to expose themselves to the same imputation, by compliance, when they knew that the evidence of their guilt must regularly be communicated in each succeeding session, to both Houses of Congress, and to the public at large? To believe either, is to believe all the parties concerned foolish, as well as profligate in the extreme, destitute equally of intellect as of principle.

To an observation made by Mr. Wolcott in the communication from the Treasury, it has been answered, that there was no merit in the disclosure, because the number of agents and the forms of the Treasury rendered it unavoidable. The fact is so—but the force of the observation turns upon the egregious folly of intentionally committing the crimes imputed; when it was certain, beforehand, that the means of detection must be furnished, and without delay, by the Treasury itself.

It is certain, that there never has been the least attempt at mystery or concealment. The documents reported by the Treasury to both Houses of Congress, carried in their face the prominent evidence of what was done. Frequent and indiscriminate personal suggestions regarded the principle of action. It is evident that it must have been understood and acquiesced in by all the members of the two Houses of Congress.

Hard would be the condition of public officers if even a misconstruction of constitutional and legal provisions, attended with no symptom of criminal motive, carrying the proof of innocence in the openness and publicity of conduct, could justly expose

them to the odious charges which on this occasion are preferred. Harder still would be their condition if, in the management of the great and complicated business of a nation, the fact of misconstruction, which is to constitute their guilt, is to be decided by the narrow and rigid rules of a criticism no less pedantic than malevolent. Pre-eminently hard in such circumstances was the lot of the man who, called to the head of the most arduous department in the public administration in a new government, without the guidance of antecedent practice and precedent, had to trace out his own path, and to adjust for himself the import and bearings of delicate and important provisions in the Constitution and in the laws.

Reposing myself on a consciousness which, in no possible situation, can fail to prove an invulnerable shield to my tranquillity, I leave to a candid public to pronounce the sentence which is due to an attempt, on such a foundation, to erect against the President of the United States, my successor in office, and myself, the heinous charges of violation of the Constitution, violation of the laws, exaction of arbitrary will on the one side, abject submission on the other, misapplication of the public money, and, to complete the newspaper group, intentional perjury.

A. HAMILTON.

WASHINGTON'S SPEECH TO CONGRESS.

Draft by Hamilton.

Dec. 8. 1795.

I trust I do not deceive myself while I indulge the persuasion, that I have never met you at any period, when more than at the present the situation of our public affairs has afforded just cause for mutual congratulation, and for inviting you to join with me in profound gratitude to the Author of all Good for the numerous and distinguished signal blessings we enjoy.

The termination of the long, expensive, and distressing war in which we have been engaged with certain Indians northwest of the Ohio, is placed in the option of the United States by a treaty which the commander of our army has provisionally concluded with twelve of the most powerful of the hostile tribes in that region. In the adjustment of these terms, the satisfaction of the Indians was deemed an object worthy no less of the policy than of the liberality of the United States, as the necessary basis of permanent tranquillity. This object, it is believed, has been fully attained. The articles agreed upon will be immediately laid before the Senate for their advice and consent.

The Creek and Cherokee Indians, who alone of the Southern tribes had annoyed our frontier, have lately confirmed their pre-existing treaties with us, and have given unequivocal evidence of a sincere disposition to carry them into effect by the surrender of the prisoners and property they had taken. But we have to lament that the fair prospect in this quarter has been momentarily clouded by wanton murders, which some citizens of Georgia have perpetrated on hunting parties of the Creeks, which have again involved that frontier in disquietude and danger, or which will be productive of further expense, and is likely to occasion more effusion of blood. Measures are in train to obviate or mitigate the consequences, and with the reliance of being able at least to prevent general hostility.

A letter from the Emperor of Morocco announces to me the renewal of our treaty, and consequently the restoration of peace, with that power. But the instrument for this purpose, which was to pass through the hands of our minister resident at Lisbon, who was temporarily absent on business of importance, is not yet received. It is with peculiar satisfaction I can add to this intelligence, that an agent, deputed on our part to Algiers, communicates that the preliminaries of a treaty with the regency of that country had been settled, and that he had no doubt of completing the business of his mission, comprehending the redemption of our unfortunate fellow-citizens from a grievous captivity.

The last advices from our envoy to the court of Madrid give,

moreover, the pleasing information that he had received positive assurances of a speedy and satisfactory conclusion of his negotiation. While the event, depending on unadjusted particulars, cannot be regarded as ascertained, it is agreeable to cherish the expectation of an issue, which, securing amicably very essential interests of the United States, will, at the same time, establish the foundation of durable harmony with a power whose friendship we have so uniformly and so sincerely endeavored to cultivate.

Though not before officially disclosed to the House of Representatives, you are all apprised that a treaty of amity, commerce, and navigation has been negotiated with Great Britain, and that the Senate, by the voice of two-thirds, have advised and consented to its ratification, upon a condition which excepts part of one article. Agreeably to this advice and consent, and to the best judgment I was able to form of the public interest, after full and mature deliberation, I have added my sanction. The result on the part of His Britannic Majesty is unknown. When received, the subject will, without delay, be placed before Congress.

This interesting summary of affairs, with regard to the foreign powers between whom and the United States controversies have subsisted, and with regard also to those of our Indian neighbors, with whom we have been in a state of enmity or misunderstanding, opens a wide field for consoling and gratifying reflections. If, by prudence and moderation on every side, the extinguishment of all the causes of external discord, which have heretofore menaced our tranquillity, on terms consistent with our national rights and honor, shall be the happy result, how firm and how precious a foundation will have been laid for establishing, accelerating, and maturing the prosperity of our country!

Contemplating the situation of the United States in their internal as well as external relations, we find equal cause for contentment and satisfaction, while the greater part of the nations of Europe, with their American dependencies, have been, and several of them continue to be, involved in a contest unusually bloody, exhausting, and calamitous; in which the ordinary evils

of foreign war are aggravated by domestic convulsion, riot, and insurrection; in which many of the arts most useful to society are exposed to decay or exile; and in which scarcity of subsistence embitters other sufferings, while even the anticipations of the blessings of peace and repose are alloyed by the sense of heavy and accumulating burthens, which press upon all the departments of industry, and threaten to clog the future springs of government;—our favored country, happy in a striking contrast, enjoys universal peace—a peace the more satisfactory because preserved at the expense of no duty. Faithful to ourselves we have *not been unmindful of any obligation* to others. Our agriculture, our commerce, our manufactures, prosper beyond former examples (the occasional depredations upon our trade, however detrimental to individuals, being greatly overbalanced by the aggregate benefits derived to it from a neutral position). Our population advances with a celerity which exceeds the most sanguine calculations, augmenting fast our strength and resources, and guaranteeing more and more our national security. Every part of the Union gives indications of rapid and various improvement. With burthens so light as scarcely to be perceived, with resources more than adequate to our present exigencies, with a mild Constitution and wholesome laws, is it too much to say that our country affords a spectacle of national happiness never surpassed, if ever before equalled in the annals of human affairs?

Placed by Providence in a situation so auspicious, motives the most sacred and commanding admonish us, with sincere gratitude to Heaven and pure love of our country, to unite our efforts to preserve, prolong, and improve the immense advantages of our condition. To co-operate with you in this most interesting work is the dearest wish of my heart.

Fellow-citizens:—Amongst the objects which will claim your attention in the course of the session, a review of our military establishment will not be the least important. It is called for by the events which have changed, and are likely still further to change, the relative situation of our interior frontier. In this review, you will no doubt allow due weight to the consideration, that the questions between us and certain foreign powers are

not yet finally adjusted, that the war in Europe is not yet terminated, and that the evacuation of our Western posts, when it shall happen, will demand a provision for garrisoning and securing them. You will consider this subject with a comprehensiveness equal to the extent and variety of its relations. The Secretary at War will be directed to lay before Congress the present state of the

With the review of our army is naturally connected that of our militia establishment. It will merit inquiry what imperfections, in the existing plan, experience may have unfolded; what improvements will comport with the progress of public opinion. The subject is of so much magnitude, in my estimation, as to beget a constant solicitude that the consideration of it will be renewed, till the greatest attainable degree of perfection is accomplished. Time, while it may furnish others, is wearing away some advantages for forwarding the object. None better deserves the persevering attention of our public councils.

In contemplating the actual condition of our Western borders, the pleasure it is calculated to afford ought not to cause us to lose sight of a truth, to the confirmation of which every day's experience contributes, viz.: That the provisions heretofore made are inadequate to protect the Indians from the violences of the irregular and lawless part of the frontier inhabitants; and that, without some more effectual plan for restraining the murders of those people, by bringing the murderers to condign punishment, all the exertions of the government to prevent or repress the outrages of the Indians, and to preserve peace with them, must prove fruitless—all our present agreeable prospects fugitive and illusory. The frequent destruction of innocent women and children, chiefly the victims of retaliation, must continue to shock humanite, while an expense truly enormous will drain the treasure of the Union.

To enforce the observance of justice upon the Indians, it is indispensable there should be competent means of rendering justice to them. If to these means could be added a provision to facilitate the supply of the articles they want on reasonable terms (a measure the mention of which I the more readily re-

peat, as in all the conferences with them they urge it with solicitude), I should not hesitate to entertain a strong hope of a permanent good understanding with them. It is agreeable to add that even the probability of their civilization, by perseverance in a proper plan, has not been diminished by the experiments thus far made.

Gentlemen of the House of Representatives:—The state of the revenue in its several relations, with the sums which have been borrowed and reimbursed, pursuant to different acts of Congress, will be submitted by the proper officer—together with an estimate of the appropriations necessary to be made for the current service of the ensuing year. Reports from the late and present director of the Mint (which I shall also cause to be laid before you), will show the situation and progress of that institution, and the necessity of some further legislative provisions for carrying the business of it more completely into execution, and for checking abuses which appear to be arising in particular quarters.

Whether measures may not be advisable to reinforce the provision for the redemption of the public debt, will not fail, I am sure, to engage your attention. In this examination, the question will naturally occur, whether the present be not a favorable juncture for the disposal of the vacant lands of the United States, northwest of the Ohio. Congress have demonstrated the sense to be, and it were superfluous to repeat more, that whatever will tend to accelerate the honorable extinguishment of our public debt, will accord as much with the true interest of our country as with the general sense of our constituents.

Gentlemen:—The progress in providing materials for the frigates, and in building them, and the state of the fortifications of our harbors, the measures which have been pursued for obtaining proper sites for arsenals, and for furnishing our magazines with military stores; and the steps which have been taken in execution of the law for opening a trade with the Indians, will also be presented for the information of Congress.

MESSAGE FOR WASHINGTON TO CONGRESS, IN REPLY TO A CALL FOR PAPERS RELATING TO THE TREATY WITH GREAT BRITAIN.

Draft by Hamilton.

March 29th. 1796.

I have received your resolution of the inst., and have considered it with the attention always due to a request of the House of Representatives. I feel a consciousness (not contradicted I trust by any part of my conduct) of a sincere disposition to respect the rights, privileges, and authorities of Congress collectively, and in its separate branches—to pay just deference to their opinions and wishes—to avoid intrusion on their province—to communicate freely information pertinent to the subjects of their deliberation. But this disposition, keeping steadily in view the public good, must likewise be limited and directed by the duty incumbent upon us all, of preserving inviolate the constitutional boundary between the several departments of the government; a duty enjoined by the very nature of a Constitution, which defines the powers delegated, and distributes them among different depositories; enforced by the solemn sanction of an oath; and only to be fulfilled by a regard no less scrupulous for the rights of the Executive, than for those of every other department.

When I communicated to the House of Representatives the treaty lately made with Great Britain, I did not transmit the papers respecting its negotiation, for reasons which appeared to me decisive.

It is contrary to the general practice of governments, to promulge the intermediate transactions of a foreign negotiation, without weighty and special reasons. The motives for great delicacy and reserve on this point are powerful. There may be situations of a country, in which particular occurrences of a negotiation, though conducted with the best views to its interest, and

even to a satisfactory issue, if immediately disclosed, might tend to embarrassment and mischief in the interior affairs of that country. Confidential discussions and overtures are inseparable from the nature of certain negotiations, and frequently occur in others. Essays are occasionally made by one party to discover the views of another in reference to collateral objects; motives are sometimes assigned for what is yielded by one party to another; which, if made public, might kindle the resentment or jealousy of other powers, or might raise in them pretensions not expedient to be gratified. Hence it is a rule of mutual convenience and security among nations, that neither shall, without adequate cause and proper reserves, promulge the details of a negotiation between them; otherwise, one party might be injured by the disclosures of the other, and sometimes without being aware of the injury likely to be done.

Consequently, the general neglect of this rule in the practice of a government, would naturally tend to destroy that confidence in its prudence and delicacy—that freedom of communication with it, which are so important in the intercourses between nation and nation, towards the accommodation of mutual differences and the adjustment of mutual interests.

Neither would it be likely to promote the advantage of a nation, that the agents of a foreign government with which it was at any time in treaty, should act under the apprehension that every expression, every step of theirs, would presently be exposed, by the promulgation of the other party, to the criticism of their political adversaries at home. The disposition to a liberal, and, perhaps, for that very reason, a wise policy in them, might be checked by the reflection, that it might afterwards appear from the disclosures on the other side, that they had not made as good bargains as they might have made. And while they might be stimulated by this to extraordinary effort and perseverance, maxims of greater secrecy and reserve in their cabinet would leave their competitors in the negotiation without the same motive to exertion. These having nothing to fear from the indiscretion of the opposite government, would only have to manage with caution their communications to their own. The

consequence of such a state of things would naturally be an increase of obstacles to the favorable close of a negotiation, and the probability of worse bargains for the nation in the habit of giving indiscreet publicity to its proceedings.

The agents of such a nation themselves would have strong inducements to extreme reserve in their communications with their own government, lest parts of their conduct might subject them in other quarters to unfriendly and uncandid constructions, which might so narrow the information they gave, as scarcely to afford sufficient light, with regard either to the fitness of their own course of proceeding, or the true state and prospects of the negotiation with which they were charged.

And thus, in different ways, the channels of information to a government might be materially obstructed by the impolitic practice of too free disclosure, in regard to its foreign negotiations.

Moreover, it is not uncommon for the instructions to negotiating agents, especially where differences are to be settled, to contain observations on the views and motives of the other party, which after an amicable termination of the business it would be contrary to decorum, unfriendly and offensive to make public. Such instructions also frequently manifest views which, if disclosed, might renew sources of jealousy and ill-will which a treaty had extinguished, might exhibit eventual plans of proceeding which had better remain unknown for future emergencies, and might even furnish occasion for suspicion, and pretext for discontent, to other powers. And in general, where more had been obtained by a treaty than the *ultimata* prescribed to the negotiator, it would be inexpedient to publish those *ultimata;* since, among other ill effects, the publication of them might prejudice the interest of the country in future negotiations with the same or with different powers.

These reasons explain the grounds of a prevailing rule of conduct among prudent governments, namely, not to promulge without weighty cause, nor without due reserves, the particulars of a foreign negotiation. It so happens indeed that many of them have no immediate application to the case of the present

treaty. And it would be unadvisable to discriminate here between such as may and such as may not so apply. But it would be very extraordinary, situated as the United States were in relation to Great Britain at the commencement of the negotiation, if some of them did not operate against a full disclosure of the papers in which it is recorded.

Connected with these general reasons against the transmission of the papers with the treaty, it was proper to consider if there were any special reasons, which recommended in the particular case a departure from the rule, and especially whether there was any purpose to which the House of Representatives is constitutionally competent which might be elucidated by those papers.

This involved a consideration of the nature of the constitutional agency of that house, in regard to treaties.

The Constitution of the United States empowers the Pesident, with the advice and consent of the Senate, two thirds concurring, to *make* treaties. It nowhere professes to authorize the House of Representatives or any other branch of the government to partake with the President and Senate in the making of treaties. The whole power of making treaties is therefore by the Constitution vested in the President and Senate.

To make a treaty, as applied to nations, is to *conclude* a contract between them *obligatory on their faith:* but that cannot be an obligatory contract, to the validity and obligation of which the assent of another power in the state is constitutionally necessary.

Again: the Constitution declares that a treaty made under the authority of the United States shall be a "supreme law of the land,"—let it be said "a law." A *law* is an obligatory rule of action *prescribed* by the competent authority, but that cannot be an obligatory rule of action or a law, to the validity and obligation of which the assent of another power in the state is constitutionally necessary.

Hence a discretionary right in the House of Representatives to assent or not to a treaty, or, what is equivalent, to execute it or not, would negative these two important provisions of our Constitution—1st, that the President and Senate shall have

power to make treaties; 2dly, that a treaty made by them shall be a law: and in the room of them would establish this provision, "that the power of making treaties resides in the President, Senate, and House of Representatives." For, whatever coloring may be given, a right of discretionary assent to a contract is a right to participate in the making of it.

Is there any thing in the Constitution which by *necessary* implication changes the force of the express terms that regulate the deposit of the power to make treaties?

If there is, it must be found in those clauses which regulate the deposit of the legislative power. Here two questions arise:

1st. Can the power of treaty reach and embrace objects upon which the legislative power is authorized to act, as the regulation of commerce, the defining of piracy, &c.; or are these objects virtually excepted out of the operation of that power?

2dly. If it can reach and embrace those objects, is there any principle which as to them gives to Congress, or more properly, the House of Representatives, a discretionary right of assent or dissent?

The affirmative of the first question is supported by these considerations:

1. The words which establish the power of treaty are manifestly broad enough to comprehend all treaties.

2. It is a reasonable presumption that they were meant to extend to all treaties usual among nations, and so to be commensurate with the variety of exigencies and objects of intercourse which occur between nation and nation; in other words, that they were meant to enable the organ of the power to manage with efficacy the external affairs of the country in all cases in which they must depend upon compact with another nation.

3. The treaties usual among nations are principally those of peace, alliance, and commerce. It is the office of treaties of peace to establish the cessation of hostilities and the conditions of it, including frequently indemnifications, sometimes pecuniary ones. It is the office of treaties of alliance to establish cases in which nations shall succor each other in war, stipulating a union of forces, the furnishing of troops, ships of war, pecuniary and other

aids. It is the office of treaties of commerce to establish rules and conditions according to which nations shall trade with each other, regulating as far as they go the external commerce of the nations in treaty. Whence it is evident that treaties naturally bear in different ways upon many of the most imporant objects upon which the legislative power is authorized to act; as the appropriation of money, the raising of armies, the equipment of fleets, the declaring of war, the regulation of trade. But,

4. This is no objection to the power of treaty having a capacity to embrace those objects: (First.) Because that latitude is essential to the great ends for which the power is instituted. (Second.) Because, unless the power of treaty can embrace objects upon which the legislative power may also act, it is essentially nugatory, often inadequate to mere treaties of peace, always inadequate to treaties of alliance or commerce. (Third.) Because it is the office of the legislative power to establish separate rules of action for the nation of which it is (the organ), its arm being too short to reach a single case in which a common obligatory rule of action for two nations is to be established. (Fourth.) Because, inasmuch as a common rule of action for independent nations can only be established by compact, it necessarily is of the office of the power of treaty to effect its establishment. (Fifth.) Because the power of legislation being unable to effect what the power of treaty must effect, it is unreasonable to suppose that the former was intended to exclude the action of the latter. (Sixth.) Because, on the other hand, there is no incongruity in the supposition that the power of treaty in establishing a joint rule of action with another nation may act upon the same subject which the legislative power may act upon in establishing a separate rule of action for one nation. (Seventh.) Because it is a common case for the different powers of government to act upon the same subject within different spheres and in different modes. Thus the legislative power lays and provides for the collection of a particular tax, the executive power collects the tax and brings it into the Treasury. So the treaty power may stipulate a pecuniary indemnification for an injury, and the legislative power may execute the stipulation by pro-

viding and designating the fund out of which the indemnification shall be made. As in the first instance the executive power is auxiliary to the legislative, so in the last the legislative power is auxiliary to the treaty powers. (Eighth.) Because this doctrine leads to no collision of powers, inasmuch as the stipulations of a treaty may reasonably be considered as restraints upon the legislative discretion. Those stipulations operate by pledging the faith of a nation and restricting its will by the force of moral obligation, and it is a fundamental principle of social right that the will of a nation as well as that of an individual, may be bound by the moral obligation of a contract. (Ninth.) Because the organ of the power of treaty is as truly the organ of the will of a nation as that of its legislative power; and there is no incongruity in the supposition that the will of a nation acting through one organ may be bound by the pledge of its faith through another organ. From these different views of the subject it results that the position, that the power of legislation acting in one sphere, and the power of treaty acting in another sphere, may embrace in their action the same objects, involves no interference of constitutional powers; and of course that the latter may reach and comprehend objects which the former is authorized to act upon; which it is necessary to suppose it does do, since the contrary supposition would essentially destroy the power of treaty: whereas the stipulations of treaties being only particular exceptions to the discretion of the legislative power, this power will always still have a wide field of action beyond and out of the exceptions.

The latitude of the power of treaty granted by analogous terms in the articles of our late confederation, as practised upon for years in treaties with several foreign powers and acquiesced in by the government and citizens of these States, is an unequivocal comment upon the meaning of the provision of our present Constitution, and a conclusive evidence of the sense in which it was understood by those who planned and by those who adopted that Constitution—supporting fully the construction of the power here advocated. That latitude could derive no aid from the circumstance of all the powers of the con-

federation being vested in one body, for that body had very little legislative power, and none in several important particulars which were actually embraced by our treaties. The examples of practice under our present government, without the least question of their propriety, is a further corroboration of the intended and accepted sense of the constitutional instrument, agreeing with the foregoing construction.

The negative of the second question above stated is supported by these considerations.

1st. A discretionary right of assent in the House of Representatives (as before shown) would contradict the two important provisions of the Constitution, that the President with the Senate shall have power to make treaties,—that the treaties so made shall be laws.

2dly. It supposes the House of Representatives at liberty to contravene the faith of the nation engaged in a treaty made by the declared constitutional agents of the nation for that purpose, and thus implies the contradiction that a nation may rightfully pledge its faith through one organ, and without any change of circumstances to dissolve the obligation, may revoke the pledge through another organ.

3dly. The obvious import of the terms which grant the power of treaty, can only be controlled, if at all, by some manifest necessary implication in favor of the discretionary right which has been mentioned. But it has been seen that no such implication can be derived from the mere grant of certain powers to the House of Representatives in common with the other branch of the legislative body. As there is a rational construction which renders the due exercise of these powers in the cases to which they are competent, compatible with the operation of the power of treaty, in all the necessary latitude, excluding the discretionary co-operation of the House of Representatives, that construction is to be preferred. It is far more natural to consider the exercise of those powers as liable to the exceptions which the power of treaty granted to the President and Senate may make, than to infer from them a right in the House to share in this power in opposition to the terms of the grant, and without a single ex-

pression in the Constitution to designate the right. It is improbable that the Constitution intended to vest in the House of Representatives so extensive a control over treaties without a single phrase that would look directly to the object. It is the more improbable, because the Senate being in the first instance a party to treaties, the right of discretionary co-operation in the House of Representatives, in virtue of its legislative character, would, in fact, terminate in itself, though but a part of the legislative body,—which suggests this question, Can the House of Representatives have any right in virtue of its *general* legislative character, which is not effectually participated by the Senate?

4thly. The claim of such a right on the ground that the legislative power is essentially deliberative, that whenever its agency is in question it has a right to act or not, and that, consequently, when provision by law is requisite to execute a treaty there is liberty to refuse it, cannot be acceded to without admitting in the legislative body, and in each part of it, an absolute discretion uncontrollable by any constitutional injunctions, limits, or restrictions, thereby overturning the fabric of a fixed and definite Constitution, and erecting upon its ruins a legislative omnipotence.

It would, for example, give to Congress a discretion to allow or not a fixed compensation to the Judges, though the Constitution expressly enjoins "that they shall at stated times receive for their services a compensation, which shall not be diminished during their continuance in office;" and would sacrifice this solemn and peremptory command of the Constitution to the opinion of Congress respecting a more essential application of the public money. Can this be true? Can any thing but absolute inability excuse a compliance with this injunction, and does not the Constitution presuppose a moral impossibility of such inability? If there be a legal discretion in any case to contravene this injunction, what limit is there to the legal discretion of the legislative body? What injunction, what restriction of the Constitution may they not supersede? If the Constitution cannot direct the exercise of their authority in particular cases, how can it limit it in any? What becomes of the appeal to our courts on

the constitutionality of a legislative act? What becomes of the power they solemnly assert to test such an act by the constitutional commission, and to pronounce it operative or null according to its conformity with or repugnance to that commission? What, in fine, becomes of the Constitution itself?

This inquiry suggests a truth fundamental to the principles of our government, and all important to the security of the people of the United States, namely, that the legislative body is not deliberative in all cases—that it is only deliberative and discretionary where the Constitution and the laws lay it under no command nor prohibition—that where they command, it can only execute; where they prohibit, it cannot act. If the thing be commanded and the means of execution are undefined, it may then deliberate on the choice of the means, but it is obliged to devise some means. It is true that the Constitution provides no method of compelling the legislative body to act, but it is not the less under a constitutional, legal, and moral obligation to act, where action is prescribed, and in conformity with the rule of action prescribed.

In asserting the authority of laws as well as of the Constitution to direct and restrain the legislative action, the position is to be understood with this difference. The Constitution obliges always—the laws till they are annulled or repealed by the proper authority; but till then they oblige the legislative body as well as individuals, and all their antecedent effects are valid and binding. And the abrogation or repeal of a law must be by an act of the regular organ of the national will for that purpose in the forms of the Constitution—not by a mere refusal to give effect to its injunctions and requisitions; especially by a part of the legislative body. A legal discretion to refuse the execution of a pre-existing law, is virtually a power to repeal it, and to attribute this discretion to a part of the legislative body is to attribute to it the whole instead of a part of the legislative power in the given case. When towards the execution of an antecedent law, further legislative provision is necessary, the past effects of the law are obligatory, and a positive repeal or suspension by the whole legislature is requisite to arrest its future operation.

The idea is essential in a government like ours that there is no body of men or individual above the law; not even the legislative body till by an act of legislation they have annulled the law.

The argument from the principle of an essentially deliberative faculty in the legislative body is the less admissible, because it would result from it, that the nation could never be conclusively bound by a treaty. Why should the inherent discretion of a future legislature be more bound by the assent of a preceding one, than this was by a pledge of the public faith through the President and Senate? Even the Senate itself, after having assented to a treaty by two-thirds in one capacity, might in another, by a bare majority, refuse to execute; a contradiction not to be vindicated by any just theory.

Hence it follows that the House of Representatives have no moral power to refuse the execution of a treaty, which is not contrary to the Constitution, because it pledges the public faith; and have no legal power to refuse its execution because it is a law, until at least it ceases to be a law by a regular act of revocation of the competent authority.

The ingredient peculiar to our Constitution in that provision which declares that treaties are laws, is of no inconsiderable weight in the question. It is one thing, whether a treaty pledging the faith of the nation shall by force of moral duty oblige the legislative will to carry it into effect; another, whether it shall be of itself a law. The last is the case in our Constitution, which by a fundamental decree gives the character of a law to every treaty made under the authority which it designates. Treaties, therefore, in our government, of themselves and without any additional sanction, have full legal perfection as laws.

Questions may be made as to the cases in which, and the authority by which, under our Constitution, a treaty consonant with it may be pronounced to have lost or may be divested of its obligatory force; a point not necessary now to be discussed. But admitting that authority to reside in the legislative body, still its exercise must be by an act of Congress, declaring the fact and the consequence, or declaring war against the power

with whom the treaty is. There is perceived to be nothing in our Constitution, no rule of constitutional law to authorize one branch alone, or the House of Representatives in particular, to pronounce the existence of such cases, or from the beginning to refuse compliance with such a treaty, without any new events to change the original obligation. A right in the whole legislative body (in our Constitution the two Houses of Congress) by a collective act to pronounce the non-operation or nullity of a treaty, satisfies every claim in favor of the legislative power, and gives to it all the weight and efficacy which is reconcilable with the due operation of the treaty power.

How discordant might be the results of a doctrine that the House of Representatives may at discretion execute or not a constitutional treaty! What confusion, if our courts of justice should recognize and enforce as laws treaties, the obligation of which was denied by the House of Representatives, and that on a principle of inherent discretion which no decision of the courts could guide! We might see our commercial and fiscal systems disorganized by the breaches made in antecedent laws by posterior treaties, through the want of some collateral provisions requisite to give due effect to the principle of the new rule. Can that doctrine be true which may present a treaty operating as a law upon all the citizens of a country, and yet legally disregarded by a portion of the legislative body?

The sound conclusion appears to be, that when a treaty contains nothing but what the Constitution permits, it is conclusive upon *all*, and *all* are bound to give it effect. When it contains more than the Constitution permits, it is void either in the whole, or as to so much as it improperly contains. While I can discover no sufficient foundation in the Constitution for the claim of a discretionary right in the House of Representatives to participate in giving validity to treaties, I am confirmed in the contrary inference by the knowledge I have that the expediency of this participation was Considered by the convention which planned the constitution, and was by them overruled.

The greatness of the power of treaty under this construction is no objection to its truth. It is doubtless a great power, and

necessarily so, else it could not answer those purposes of national security and interest in the external relations of a country for which it is designed. Nor does the manner in which it is granted in our Constitution furnish any argument against the magnitude which is ascribed to it, but the contrary. A treaty cannot be made without the actual co-operation and mutual consent of the Executive and two-thirds of the Senate. This necessity of positive co-operation of the Executive charges him with a high responsibility, which cannot but be one great security for the proper exercise of the power. The proportion of the Senate requisite to their valid consent to a treaty, approaches so near to unanimity that it would always be very extraordinary, if it should be given to one really pernicious or hurtful to the state. These great guards are manifest indications of a great power being meant to be deposited. So that the manner of its deposit is an argument for its magnitude rather than an argument against it, and an argument against the intention to admit with a view to security the discretionary co-operation of the House of Representatives rather than in favor of such a right in them.

Two-thirds of the two Houses of Congress may exercise their whole legislative power not only without but against the consent of the Executive. It is not evident on general principles that in this arrangement there is a materially greater security against a bad law than in the other against a bad treaty. The frequent absolute necessity of secrecy not only in the conduct of a foreign negotiation but at certain conjunctures, as to the very articles of a treaty, is a natural reason why a part, and that the least numerous part, of the legislative body was united with the Executive in the making of treaties in exclusion of the other and the most numerous. But if the deposit of the power of treaty was less safe, and less well guarded than it is conceived to be, this would not be a good argument against its being in fact exclusively deposited as the terms of the Constitution, which establish it, import it to be. It would only be an argument for an amendment to the Constitution modifying the deposit of the power differently, and superadding new guards.

If the House of Representatives, called upon to act in aid of a treaty made by the President and Senate, believe it to be unwarranted by the Constitution which they are sworn to support, it will not be denied that they may pause in the execution until a decision on the point of constitutionality in the Supreme Court of the United States shall have settled the question.

But this is the only discretion of that House, as to the obligation to carry a treaty made by the President and Senate into effect, in the existence of which I can acquiesce as being within the intent of the Constitution.

Hence there was no question, in my opinion, of the competency of the House of Representatives, which I could presuppose likely to arise, to which any of the papers now requested could be deemed applicable; nor does it yet appear that any such question has arisen, upon which the request has been predicated.

Were even the course of reasoning which I have pursued less well founded than it appears to me to be, the call for papers as a preliminary proceeding of the House would still seem to be premature.

A question on the constitutionality of a treaty can manifestly only be decided by comparing the instrument itself with the Constitution.

A question whether a treaty be consistent with, or adverse to the interests of the United States, must likewise be decided by comparing the stipulations which it actually contains with the situation of the United Sates in their internal and external relations.

Nothing extrinsic to the treaty, or in the manner of its negotiation, can make it constitutional or unconstitutional, good or bad, salutary or pernicious. The internal evidence it affords is the only proper standard of its merits.

Whatever therefore be the nature of the duty, or discretion of the House, as to the execution of the treaty, it will find its rule of action in the treaty.

Even with reference to and animadversion on the conduct of the agents who made the treaty, the presumption of a criminal mismanagement of the interests of the United States ought first,

it is conceived, to be deduced from the intrinsic nature of the treaty, and ought to be pronounced to exist prior to a further inquiry to ascertain the guilt and the guilty. Whenever the House of Representatives, proceeding upon any treaty, shall have taken the ground that such a presumption exists, in order to such an inquiry, their request to the Executive to be caused to be laid before them papers which may contain information on the subject, will rest on a foundation that cannot fail to secure to it due efficacy.

But, under all the circumstances of the present request (circumstances which I forbear to particularize), and in its present indefinite form, I adopt with reluctance and regret, but with entire conviction, the opinion, that a just regard to the Constitution and to the duty of my office forbids on my part a compliance with that request.

FAREWELL ADDRESS.

ABSTRACT OF POINTS TO FORM AN ADDRESS.*

1796.

I. The period of a new election approaching, it is his duty to announce his intention to decline.

II. He had hoped that long ere this it would have been in his power, and particularly had nearly come to a final resolution in the year 1792 to do it, but the peculiar situation of affairs, and advice of confidential friends, dissuaded.

III. In acquiescing in a further election he still hoped a year or two longer would have enabled him to withdraw, but a continuance of causes has delayed till now, when the position of our

* This endorsement, together with the whole of this paper, is copied from a draft in Hamilton's hand.—Ed.

country, abroad and at home, justify him in pursuing his inclination.

IV. In doing it he has not been unmindful of his relation as a dutiful citizen to his country, nor is now influenced by the smallest diminution of zeal for its interest or gratitude for its past kindness, but by a belief that the step is compatible with both.

V. The impressions under which he first accepted were explained on the proper occasion.

VI. In the execution of it he has contributed the best exertions of a very fallible judgment—anticipated his insufficiency—experienced his disqualifications for the difficult trust, and every day a stronger sentiment from that cause to yield the place—advance into the decline of life—every day more sensible of weight of years, of the necessity of repose, of the duty to seek retirement, &c. Add,

VII. It will be among the purest enjoyments which can sweeten the remnant of his days, to partake in a private station, in the midst of his fellow-citizens, the laws of a free government, the ultimate object of his cares and wishes.

VIII. As to rotation.

IX. In contemplating the moment of retreat, cannot forbear to express his deep acknowledgments and debt of gratitude for the many honors conferred on him—the steady confidence which, even amidst discouraging scenes and efforts to poison its source, has adhered to support him, and enabled him to be useful—marking, if well placed, the virtue and wisdom of his countrymen. All the return he can now make must be in the vows he will carry with him to his retirement: 1st, for a continuance of the Divine beneficence to his country; 2d, for the perpetuity of their union and brotherly affection—for a good administration insured by a happy union of watchfulness and confidence; 3d, that happiness of people under auspices of liberty may be complete; 4th, that by a prudent use of the blessing they may recommend to the affection, the praise, and the adoption, of every nation yet a stranger to it.

X. Perhaps here he ought to end. But an unconquerable

solicitude for the happiness of his country will not permit him to leave the scene without availing himself of whatever confidence may remain in him, to strengthen some sentiments which he believes to be essential to their happiness, and to recommend some rules of conduct, the importance of which his own experience has more than ever impressed upon him.

XI. To consider the Union as the rock of their salvation, presenting summarily these ideas:

Safety, peace, and liberty and commerce.

1. The strength and greater security from external danger.
2. Internal peace, and avoiding the necessity of establishments dangerous to liberty.
3. Avoids the effects of foreign intrigue.
4. Breaks the force of faction by rendering combinations more difficult.

Fitness of the parts for each other by their very discriminations:

1. The North, by its capacity for maritime strength and manufacture.

2. The agricultural South furnishing materials and requiring those protections.

The Atlantic board to the western country by the strong interest of peace, and

The Western, by the necessity of Atlantic maritime protection.

Cannot be secure of their great outlet otherwise—cannot trust a foreign connection.

Solid interests invite to Union. Speculation of difficulty of Government ought not to be indulged, nor momentary jealousies —lead to impatience.

Faction and individual ambition are the only advisers of disunion.

Let confidence be cherished. Let the recent experience of the West be a lesson against impatience and distrust.

XII. Cherish the actual Government. It is the Government of our own choice, free in its principles, the guardian of our common rights, the patron of our common interests, and containing within itself a provision for its own amendment.

But let that provision be cautiously used—not abused; changing only in any material points as experience shall direct; nei-

ther indulging speculations of too much or too little force in the system; and remembering always the extent of our country.

Time and habit of great consequence to every government of whatever structure.

Discourage the spirit of faction, the bane of free government; and particularly avoid founding it on geographical discriminations. Discountenance slander of public men. Let the Departments of Government avoid interfering and mutual encroachment.

XIII. Morals, religion, industry, commerce, economy.

Cherish public credit—source of strength and security.

Adherence to systematic views.

XIV. Cherish good faith, justice, and peace, with other nations:

1. Because religion and morality dictate it.

2. Because policy dictates it.

If these could exist, a nation invariably honest and faithful, the benefits would be immense.

But avoid national antipathies or national attachments.

Display the evils; fertile source of wars—instrument of *ambitious rulers.*

XV. Republics peculiarly exposed to foreign intrigue, those sentiments lay them open to it.

XVI. The great rule of our foreign politics ought to be to have as little political connection as possible with foreign nations.

Establishing temporary and convenient rules that commerce may be placed on a stable footing; merchants know their commerce; how to support them, not seeking *favors.*

Cultivating commerce with all by gentle and natural means, diffusing and diversifying it, but *forcing nothing*—and cherish the sentiment of *independence*, taking pride in the appellation of American.

XVII. Our separation from Europe renders standing alliances inexpedient—subjecting our peace and interest to the primary and complicated relations of European interests.

Keeping constantly in view to place ourselves upon a respectable *defensive*, and if forced into controversy, trusting to connections of the occasion.

XVIII. Our attitude imposing and rendering this policy safe.

But this must be with the exception of existing engagements, to be preserved but not extended.

XIX. It is not expected that these admonitions can control the course of the human passions, but if they only moderate them in some instances, and now and then excite the reflections of virtuous men heated by party spirit, my endeavor is rewarded.

XX. How far in the administration of my present office my conduct has conformed to these principles, the public records must witness. My conscience assures me that I believed myself to be guided by them.

XXI. Particularly in relation to the present war, the proclamation of the 22d of April, 1793, is the key to my plan.

Touch sentiments with regard to conduct of belligerent powers. A wish that France may establish good government.

Approved by your voice and that of your representatives in Congress, the spirit of that measure has continually guided me, uninfluenced by, and regardless of, the complaints and attempts of any of the powers at war or their partisans to change them.

Time every thing.

I thought our country had a right under all the circumstances to take this ground, and I was resolved as far as depended on me to maintain it firmly.

XXII. However, in reviewing the course of my administration, I may be unconscious of intentional errors, I am too sensible of my own deficiencies not to believe that I may have fallen into many. I deprecate the evils to which they may tend, and pray Heaven to avert or mitigate and abridge them. I carry with me, nevertheless, the hope that my motives will continue to be viewed with indulgence, that after forty-five years of my life devoted to public service with a good zeal and upright views, the faults of deficient abilities will be consigned to oblivion, and myself must soon be to the mansions of rest.

XXIII. Neither interest nor ambition has been my impelling motive. I never abused the power confided to me—I have not bettered my fortune, retiring with it, no otherwise improved than by the influence on property of the common blessings of my country:—I retire with undefiled hands and an uncorrupted heart, and with ardent vows for the welfare of that country, which has been the native soil of myself and my ancestors for *four generations.*

WASHINGTON'S FAREWELL ADDRESS.*

Draft by Hamilton.

August, 1796.

The period for a new election of a citizen to administer the executive government of the United States, being not very distant, and the time actually arrived when your thoughts must be employed in designating the person who is to be clothed with that important trust for another term, it appears to me proper, and especially as it may conduce to a more distinct expression of the public voice, that I should now apprize you of the resolution I have formed to decline being considered among the number of those out of whom a choice is to be made.

I beg you, nevertheless,† to be assured that the resolution which I announce, has not been taken without a strict regard to all the considerations attached to‡ the relation which, as a dutiful citizen, I bear § to my‖ country, and that in withdrawing the tender of my service, which silence in my situation might imply, I am influenced by no diminution of zeal for its future interest, nor by any deficiency of grateful respect for its past kindness, but by a full conviction that such a step is compatible with both.

The acceptance of, and the continuance hitherto in the office to which your suffrages have twice called me, has been a uniform sacrifice of private inclination to¶ the opinion of public duty coinciding with what appeared to be your wishes. I had constantly hoped that it would have been much earlier in my power, consistently with motives which I was not at liberty to disregard,

* This is a copy of the original draft in Hamilton's autograph. The notes embrace the *final* alterations in *this* draft—but there are many previous erasures which can only be given in a fac-simile.—Ed.

† at the same time.

‡ connected with—inseparable from—incident to.

§ bears.

‖ his.

¶ combined with a deference for.

to return to that retirement from which *those** *motives* had reluctantly drawn me.

The strength of my desire to withdraw previous to the last election, had even led to the preparation of an address to declare it to you. but deliberate+ reflection on the very critical and perplexed posture of our affairs with foreign nations, and the unanimous advice of men‡ every way entitled to my confidence, obliged§ me to abandon the idea.

I rejoice that the state of your national concerns, external as well as internal, no longer renders the pursuit of my inclination incompatible with the sentiment of duty or propriety, and ¦ that whatever partiality any portion of you may still retain for my services, they, under the existing circumstances of our country, will not disapprove the¶ resolution** I have formed.

The impressions under which I first accepted the arduous trust of Chief Magistrate of the United States, were explained on the proper occasion. In the discharge of this trust, I can only say that I have, with pure intentions, contributed towards the organization and administration of the government the best exertions of which a very fallible judgment was capable; that conscious at++ the outset of the inferiority of my qualifications for the station, experience in my own eyes, and perhaps still more in those of others, has not diminished in me the diffidence of myself—and every day the increasing weight of years admonishes me more and more that the shade of retirement is as necessary‡‡ as it will be welcome to me. Satisfied that if any circumstances have given a peculiar value to my services, they were temporary. I have the consolation to believe that while inclination and prudence urge me to recede from the political scene, patriotism does not forbid it. May I also have that of knowing in my§§ retreat, that the involuntary errors which I have probably committed, have been the causes of no serious or lasting mischief to my country, and thus be spared the anguish of regrets which would disturb the repose of my retreat and embitter the remnant

* they.
whatever.
‡‡ to me.
+ mature.
¶ my.
§§ retirement.
‡ persons.
** to retire.
§ impelled.
++ in.

of my life! I may then expect to realize, without alloy, the pure enjoyment of partaking, in the midst of my fellow-citizens, of the benign influence of good laws under a free government; the ultimate object of all my wishes, and to which I look as the happy reward* of our mutual labors and dangers.

In looking forward to the moment which is to terminate the career of my public life, my sensations do not permit me to suspend the deep acknowledgments required by that debt of gratitude, which I owe to my beloved country, for the many honors it has conferred upon me, still more for the distinguished and steadfast confidence it has reposed in me, and for the opportunities it has thus afforded me† of manifesting my inviolable attachment, by services faithful and persevering—however the inadequateness of my faculties may have ill seconded my‡ zeal. If benefits have resulted to you, my fellow-citizens, from these services, let it always be remembered to your praise, and as an instructive example in our annals, that the constancy of your support amidst appearances§ dubious, vicissitudes of fortune often discouraging, and in situations in which, not unfrequently, want of success has seconded the criticisms of malevolence,‖ was the essential prop of the efforts and the guarantee of the measures by which they were achieved.

Profoundly penetrated with this idea, I shall carry it with me to my retirement, and to my grave, as a lively incitement to unceasing vows (the only returns I can henceforth make) that Heaven may continue to you the choicest tokens of its beneficence, merited by national piety and morality—that your union and brotherly affection may be perpetual—that the free Constitution, which is the work of your own hands, may be sacredly maintained—that its administration in every department may be stamped with wisdom and virtue—that, in fine, the happiness of

* I hope.

† I have thence enjoyed.

‡ have rendered their efforts unequal to my—disproportional.

§ under circumstances in which the passions, agitated in every direction, were liable to the greatest fluctuations.

‖ sometimes.

the people of these States under the auspices of liberty may be made complete, by so careful a preservation, and so prudent a use of this blessing, as will acquire them the glorious satisfaction of recommending it to the affection—the praise—and the adoption of every nation which is yet a stranger to it.

Here, perhaps, I ought to stop: but a solicitude for your welfare, which cannot end but with my life, and the fear that there may exist projects unfriendly to it, against which it may be necessary you should be guarded, urge me in taking leave of you to offer to your solemn consideration and frequent review, some sentiments, the result of mature reflection confirmed by observation and experience, which appear to me essential to the permanency of your felicity as a people. These will be offered with the more freedom, as you can only see in them the disinterested advice of a parting friend, who can have no personal motive to tincture or bias his counsel.

Interwoven as is the love of liberty with every fibre of your hearts, no recommendation is necessary to fortify your attachment TO IT. Next to this, that unity of government which constitutes you one people, claims your vigilant care and guardianship—as a main pillar of your real independence, of your peace, safety, freedom, and happiness.

This being the point in your political fortress, against which the batteries of internal and external enemies will be most constantly and actively, however covertly and insidiously levelled, it is of the utmost importance that you should appreciate, in its full force, the immense value of your political union to your national and individual happiness—that you should cherish towards it an affectionate and immovable attachment, and that you should watch for its preservation with zealous solicitude.

For this, you have every motive of sympathy and interest. Children for the most part of a common country, that country claims and ought to concentrate your affections. The name of American must always gratify and exalt the just pride of patriotism more than any denomination which can be derived from local discriminations. You have with slight shades of difference

the same religion, manners, habits, and political institutions and principles—you have, in a common cause, fought and triumphed together. The independence and liberty you enjoy are the work of joint councils, efforts, dangers, sufferings, and successes. By your union you achieved them, by your union you will most effectually maintain them.

The considerations which address themselves to your sensibility, are greatly* strengthened† by those which apply to your interest. Here, every portion of our country will find the most urgent and commanding motives for guarding and preserving the union of the whole.

The North in‡ intercourse with the South under the equal laws of one government, will, in the productions of the latter, many of them peculiar, find vast additional resources of maritime and commercial enterprise.§ The South, in the same intercourse, will share in the benefits of the agency of the North, will find its agriculture promoted and its commerce extended by turning into its own channels those means of navigation which the North more abundantly affords; and while it contributes to extend the national navigation, will participate in the protection of a maritime strength to which itself is unequally adapted. The East, in a like intercourse with the West, finds‖ a valuable vent for the commodities which it brings from abroad or manufactures at home. The West derives through this channel an essential supply of its wants; and what is far more important to it, it must owe the secure and permanent enjoyment of the indispensable outlets for its own productions to the weight, influence, and maritime resources of the Atlantic States.¶ The tenure by which it could hold this advantage either from its own separate strength, or by an apostate and unnatural connection with any foreign nation, must be intrinsically and necessarily

* even.

† outweighed.

‡ free and unfettered.

§ and precious materials of their manufacturing industry.

‖ and in the progressive improvement of internal navigation will more and more find.

¶ directed by an indissoluble community of interests.

precarious, at every moment liable to be disturbed by the* combinations of those primary† interests which constantly regulate the conduct of every portion of Europe—and where every part finds a particular interest in the Union. All the parts of our country will find in their Union‡ strength, proportional security from external danger, less frequent interruption of their peace with foreign nations; and what is far more valuable, an exemption from those broils and wars between the parts if disunited, which, then, our rivalships, fomented by foreign intrigue or the opposite alliances with foreign nations engendered by their mutual jealousies, would inevitably produce.§

These considerations speak a conclusive language to every virtuous and considerate mind. They place the continuance of our union among the first objects of patriotic desire. Is there a doubt whether a common government can long embrace so extensive a sphere? Let time and experience decide the question. Speculation in such a case ought not to be listened to. And 'tis rational to hope that the auxiliary‖ governments of the subdivisions, with a proper organization of the whole, will secure a favorable issue to the experiment. 'Tis allowable to believe that the spirit of party, the intrigues of foreign nations, the corruption and the ambition of individuals, are likely to prove more formidable adversaries to the unity of our empire, than any inherent difficulties in the scheme. 'Tis against these that the guards¶ of national opinion, national sympathy, national prudence and virtue, are to be erected. With such obvious motives to union, there will be always cause from the fact itself to distrust the patriotism of those who** may endeavor to weaken its bands.

* fluctuating.

† European.

‡ greater independence from the superior abundance and variety of production incident to the diversity of soil and climate. All the parts of it must find in the aggregate assemblage and reaction of their mutual population—production.

§ consequent exemption from the necessity of those military establishments upon a large scale which bear in every country so menacing an aspect towards liberty.

‖ agency of.

¶ mounds.

** in any quarter.

And by all the love I bear you, my fellow-citizens, I conjure* you, as† often as it appears, to frown upon the attempt.

Besides the more serious causes which have been hinted at, as endangering our Union, there is another less dangerous but against which it is necessary to be on our guard; I mean the petulance of party‡ differences of opinion. It is not uncommon to hear the irritations which these excite, vent themselves in declarations that the different parts of the Union are ill assorted and cannot remain together—in menaces from the inhabitants of one part to those of another, that it will be dissolved by this or that measure. Intimations of the kind are as indiscreet as they are intemperate. Though frequently made with levity and without being in earnest, they have a tendency to produce the consequence which they indicate. They teach the minds of men to consider the Union as precarious, as an object to which they are not to attach their hopes and fortunes, and thus weaken the sentiment in its favor. By rousing the resentment and alarming the pride of those to whom they are addressed, they set ingenuity to work to depreciate the value of the object, and to discover motives of indifference to it. This is not wise. Prudence demands that we should habituate ourselves in all our words and actions to reverence the Union as a sacred and inviolable palladium of our happiness, and should discountenance whatever can lead to a suspicion that it can in any event be abandoned.

'Tis matter of serious concern that parties in this country for some time past have been too much characterized by geographical discriminations—northern and southern States, Atlantic and western country. These discriminations,§ which are the mere artifice of the spirit of party, (always dexterous to avail itself of every source of sympathy, of every handle by which the passions can be taken hold of, and which has been careful to turn to account the circumstance of territorial vicinity,¶) have furnished an argument against the Union as evidence of a real difference

* exhort—(*written first.*)
‡ collisions and disgusts.
‖ sympathy of.
† "often"—instead of "far."
§ of party.
¶ neighborhood.

of local interests and views, and serve to hazard it by organizing large districts of country under the direction of* different factions whose passions and prejudices, rather than the true interests of the country, will be too apt to regulate the use of their influence. If it be possible to correct this poison in the affairs of our country, it is worthy the best endeavors of moderate and virtuous men to effect it.

One of the expedients which the partisans of faction employ towards strengthening their influence by local discriminations,† is to misrepresent the opinions and views of rival districts. The people at large cannot be too much on their guard against the jealousies which grow out of these misrepresentations. They tend to render aliens to each other those who ought to be tied together by fraternal affection. The western country have lately had a useful lesson on this subject. They have seen in the negotiation by the Executive, and in the unanimous ratification of the treaty with Spain by the Senate, and in the universal satisfaction at that event in all parts of the country, a decisive proof how unfounded have been the suspicions instilled‡ in them of a policy in the Atlantic States, and in the different departments of the general government, hostile to their interests in relation to the Mississippi. They have seen two treaties formed which secure to them every thing that they could desire to confirm their prosperity. Will they not henceforth rely for the preservation of these advantages on that Union by which they were procured? Will they not reject those counsellors who would render them alien to their brethren and connect them with aliens?

To the duration and efficacy of your Union, a government extending over the whole is indispensable. No alliances however strict between the parts could be an adequate substitute. These could not fail to be liable to the infractions and interruptions which all alliances in all times have suffered. Sensible of this important truth, you have lately established a Constitution of general government, better calculated than the former for an intimate union, and more adequate to the duration of

* the leaders of. † within local spheres. ‡ propagated among.

your common concerns. This government, the offspring of your own choice, uninfluenced and unawed, completely free in its principles, in the distribution of its powers, uniting energy with safety, and containing in itself a provision for its own amendment, is well entitled to your confidence and support. Respect for its authority, compliance with its laws, acquiescence in its measures,* are duties dictated by the fundamental maxims of true liberty. The basis of our political systems is the right of the people to make and to alter their constitutions of government. But the Constitution for the time, and until changed by an explicit and authentic act of the whole people, is sacredly binding upon all. The very idea of the right and power of the people to establish government, presupposes the duty of every individual to obey the established government.

All obstructions to the execution of the laws—all *combinations* and *associations* under whatever plausible character, with the real design to counteract,† control,‡ or awe the regular§ action of the constituted authorities, are contrary to this fundamental principle, and of the most fatal tendency. They serve to organize faction,‖ and to put in the stead of the delegated will of the whole nation the will of a party, often a small** minority of the whole community; and according to the alternate triumph of different parties to make the public administration reflect the†† schemes and projects of faction rather than the wholesome plans of common councils and deliberations. However combinations or associations of this description may occasionally promote popular ends and purposes, they are likely to produce, in the course of time and things, the most effectual engines by which artful, ambitious, and unprincipled men will be enabled to subvert the power of the people and usurp the reins of government.

Towards the preservation of your government and the per-

* ordinary management of affairs to be left to represent.
† direct.
‡ influence.
§ deliberation or.
‖ to give it an artificial force.
** but artful and enterprising.
†† ill concerted.

manency of your present happy state, it is not only requisite that you steadily discountenance irregular oppositions to its authority, but that you should be upon your guard against the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be, to effect alterations in the forms of the Constitution tending to impair the energy of the system, and so to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are as necessary to fix the true character of governments as of any other human institutions; that experience is the surest standard by which the real tendency of existing constitutions of government can be tried; that changes upon* the credit of mere hypothesis and opinion exposes you to perpetual change from the successive and endless variety of hypothesis and opinion. And remember also,† that for the efficacious management of your common interests, in a country so extensive as ours, a government of as much force and strength as is consistent with the perfect security of liberty is indispensable. Liberty itself will find in such a government, with powers properly distributed and arranged, its surest guardian and protector. In my opinion, the real danger in our system is, that the general government, organized as at present, will prove too weak, rather than too powerful.

I have already observed the danger to be apprehended from founding our parties on geographical discriminations. Let me now enlarge the view of this point, and caution you in the most solemn manner against the baneful effects of party spirit in general. This spirit unfortunately is inseparable from human nature, and has its root in the strongest passions of the human heart. It exists under different shapes in all governments, but‡ in those of the popular form it is always seen in its utmost vigor and rankness, and is their worst enemy. In republics of narrow extent, it is not difficult for those who at any time possess the reins of administration, or even for partial combinations of men,

* facility in.

† always.

‡ in different degrees stifled, controlled or repressed.

who from birth, riches, and other sources of distinction, have an extraordinary influence, by possessing or acquiring the direction of the military force, or by sudden efforts of partisans and followers to overturn the established order of things, and effect a usurpation. But in republics of large extent, the one or the other is scarcely possible. The powers and opportunities of resistance of a numerous and wide extended nation defy the successful efforts of the ordinary military force, or of any collections* which wealth and patronage may call to their aid, especially if there be no city of overbearing force, resources, and influence. In such republics it is perhaps safe to assert, that the conflicts of popular faction offer the only avenues to tyranny and usurpation. The domination of one faction over another, stimulated by that spirit of revenge which is apt to be gradually engendered, and which in different ages and countries has produced the greatest enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result, predispose the minds of men to seek repose and security in the absolute power of a single man. And the† leader of a prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of an ambitious and criminal self-aggrandizement.

Without looking forward to such an extremity (which, however, ought not to be out of sight), the ordinary and continual mischiefs of the spirit of party make it the interest and the duty of a wise people, to discountenance and repress it.

It serves always to distract the councils and enfeeble the administration of the government. It agitates the community with ill-founded jealousies and false alarms.‡ It opens inlets for foreign corruption and influence, which find an easy access through the channels of party passions—and cause the true policy and interest of our own country to be made subservient to the policy and interest of one and another foreign nation; some-

* assemblages.

† some.

‡ embittering one part of the community against another, and producing occasionally riot and insurrection.

times enslaving our own government to the will of a foreign government.

There is an opinion that parties in free countries are salutary checks upon the administration of the government, and serve to invigorate the spirit of liberty. This, within certain limits, is true; and in governments of a monarchical character or bias, patriotism may look with some favor on the spirit of party. But in those of the popular kind, in those purely elective, it is a spirit not to be fostered or encouraged. From the natural tendency of such governments, it is certain there will always be enough of it for every salutary purpose, and there being constant danger of excess, the effort ought to be, by the force of public opinion, to mitigate and correct it. 'Tis a fire which *cannot be quenched, but demands† a uniform vigilance to prevent its bursting into a flame—lest it should not only warm, but consume.

It is important, likewise, that the habits of thinking of the people should tend to produce caution in their public agents in the several departments of government, to retain each within its proper sphere, and not to permit one to encroach upon another, —that every attempt of the kind, from whatever quarter, should meet with the discountenance‡ of the community, and that, in every case in which a precedent of encroachment shall have been given, a corrective be sought in [revocation be effected by] a careful attention to the next choice§ of public agents. The spirit of encroachment tends to absorb‖ the powers of the several branches and departments into one, and thus to establish, under whatever forms, a despotism. A just knowledge of the human heart, of that love of power which predominates in it, is alone sufficient to establish this truth. Experiments, ancient and modern—some in our own country, and under our own eyes, serve to confirm it. If, in the public opinion, the distribution of the constitutional powers be in any instance wrong, or inexpedient—let it be corrected by the authority of the people in a

* not to. † demanding. ‡ reprobation.
§ election. ‖ and consolidate.

legitimate constitutional course. Let there be no change by usurpation, for though this may be the instrument of good in one instance, it is the ordinary* instrument of the destruction† of free government—and the influence of the precedent is always infinitely more pernicious than any thing which it may achieve can be beneficial.

In all those dispositions which promote political happiness,‡ religion and morality are essential props. In vain does he§ claim the praise of patriotism, who labors to subvert or undermine these great pillars of human happiness, these firmest foundations of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and cherish them. A volume could not trace all their connections with private and public happiness.

Let it simply be asked, where is the security for property, for reputation, for life, if the sense of moral and religious obligation deserts the oaths which are ‖administered in courts of justice? Nor ought we to flatter ourselves that morality can be separated from religion. Concede as much as may be asked to the effect of refined education in minds of peculiar structure—can we believe—can we in prudence suppose that national morality can be maintained in exclusion of religious principles? Does it not require the aid of a generally received and divinely authoritative religion?

'Tis essentially true that virtue or morality is a main and necessary spring of popular or republican governments. The rule, indeed, extends with more or less force to all free governments. Who that is a prudent and sincere friend to them, can look with indifference on the ravages which are making in the foundation of the fabric—religion? The uncommon means which of late have been directed to this fatal end, seem to make it in a particular manner the duty of the retiring chief of a nation to warn his country against tasting of the poisonous draught.

Cultivate also, industry and frugality. They are auxiliaries

* and natural. † death. ‡ prosperity.
§ that man. ‖ instruments of investigation.

of good morals, and great sources of private and national prosperity. Is there not room for regret, that our propensity to expense exceeds the maturity of our country for expense? Is there not more luxury among us, in various classes, than suits the actual period of our national progress? Whatever may be the apology for luxury in a country mature in all the arts which are its ministers and the means of national opulence—can it promote the advantage of a young agricultural country, little advanced in manufactures, and not much advanced in wealth?*

Cherish public credit as a mean of strength and security. As one method of preserving it, use it as little as possible. Avoid occasions of expense by cultivating peace—remembering always that the preparation against danger, by timely and provident disbursements, is often a mean of avoiding greater disbursements to repel it. Avoid the accumulation of debt by avoiding occasions of expense, and by vigorous exertions in time of peace to discharge the debts which unavoidable wars may have occasioned, not transferring to posterity the burthen which we ought to bear ourselves. Recollect, that towards the payment of debts there must be revenue, that to have revenue there must be taxes, that it is impossible to devise taxes which are not, more or less, inconvenient and unpleasant—that they are always a choice of difficulties—that the intrinsic embarrassment which never fails to attend a selection of objects, ought to be a motive for a candid construction of the conduct of the government in making it—and that a spirit of acquiescence in those measures for obtaining revenue which the public exigencies dictate, is, in an especial manner, the duty and interest of the citizens of every State.

Cherish good faith and justice towards, and peace and harmony with, all nations. Religion and morality enjoin this conduct, and it cannot be but that true policy equally demands it. It will be worthy of a free, enlightened, and at no distant period, a great nation, to give to mankind the magnanimous and too novel example of a people invariably governed by† those exalted

* in the infancy of the arts, and certainly not in the manhood of wealth.

† exalted justice and benevolence.

views. Who can doubt that in a long course of time and events the fruits of such a conduct would richly repay any temporary advantages which might be lost by a steady adherence to the plan? Can it be that Providence has not connected the permanent felicity of a nation with its virtue? The experiment is recommended by every sentiment which ennobles human nature. —Alas! is it rendered impossible by its vices?

Towards the execution of such a plan, *nothing is more essential than that †antipathies against particular nations and passionate attachments for others, should be avoided,—and that instead of them we should cultivate just and amicable feelings towards all . . . .That nation, which indulges towards another, an habitual hatred or an habitual fondness, is in some degree a slave . . . .It is a slave to its animosity, or to its affection—either of which is sufficient to lead it astray from its duty and interest. Antipathy against one nation, which never fails to beget a similar sentiment in the other, disposes each more readily to offer injury and insult to the other, to lay hold of slight causes of umbrage, and to be haughty and untractable, when accidental or trifling differences arise. Hence frequent quarrels‡ and bitter and obstinate contests. The nation, urged by resentment and rage, sometimes impels the government to war, contrary to its own calculations of policy. The government sometimes participates in this propensity, and does through passion, what reason would forbid at other times; it makes the animosity of the nations subservient to hostile projects which originate in ambition and other sinister motives. The peace, often, and sometimes the liberty of nations, has been the victim of this cause.

In like manner,§ a passionate attachment of one nation to another produces multiplied ills. Sympathy for the favorite

* it is very material.

† that while we entertain proper impressions of particular cases—of friendly or unfriendly conduct of different foreign nations towards us, we nevertheless avoid fixed and rooted antipathies against any, or passionate attachments for any, instead of these cultivating, as a general rule, just and amicable feelings towards all.

‡ broils.

§ So likewise.

nation, promoting* the illusion of a supposed common interest, in cases where it does not exist, †the enmities of the one betrays into a participation in its quarrels and wars, without adequate inducements or justifications. It leads to the concession of privileges to one nation, and to the denial of them to others—which is apt doubly to injure the nation making the concession by an unnecessary yielding of what ought to have been retained, and by exciting jealousy, ill-will, and retaliation in the party from whom an equal privilege is withheld. And it gives to ambitious, corrupted‡ citizens, who devote themselves to the views of the favorite foreign power, facility in betraying or sacrificing the interests of their own country, even with popularity,§ gilding with‖

As avenues to foreign influence in innumerable ways, such attachments are peculiarly alarming to the enlightened independent patriot. How many opportunities do they afford to intrigue with domestic factions, to practise with success the arts of seduction, to mislead¶ the public opinion—to influence or awe the public councils? Such an attachment of a small or weak, towards a great and powerful nation, destines the former to revolve round the latter as its satellite.

Against the mischiefs of foreign influence all the jealousy of a free people ought to be constantly** exerted;†† but the jealousy of it to be useful must be impartial, else it becomes an instrument of the very influence to be avoided instead of a defence‡‡ against it.

Excessive partiality for one foreign nation, and excessive dis-

* facilitating.

† and communicating to one.

‡ or deluded.

§ without odium.

‖ the appearance of a virtuous impulse, the base yieldings of ambition or corruption.

¶ "mislead" *for* "misdirect."

** continually.

†† all history and experience in different ages and nations has proved that foreign influence is one of the most baneful foes of republican government.

‡‡ guard.

like of another, leads to see danger only on one side, and serves to veil* the arts of influence on the other. Real patriots, who resist the intrigues of the favorite, become suspected and odious. Its tools and dupes usurp the applause and confidence of the people to betray their interests.

The great rule of conduct for us in regard to foreign nations, ought to be to have as little *political* connection with them as possible. So far as we have already formed engagements, let them be fulfilled with circumspection, indeed, but with perfect good faith; here† let it stop.

Europe has a set of primary interests, which have none or a very remote relation to us. Hence she must be involved in frequent contests, the causes of which will be essentially foreign to us. Hence, therefore, it must necessarily be unwise on our part to implicate ourselves by an artificial connection in the ordinary vicissitudes of European politics—in the combination and collisions of her friendships or enmities.

Our detached and distant situation invites us to a different course, and enables us to pursue it. If we remain a united people, under an efficient government, the period is not distant when we may defy material injury from external annoyance—when we may take such an attitude as will cause the neutrality we shall at any time resolve to observe, to be violated with caution —when it will be the interest of belligerent nations, under the impossibility of making acquisitions upon us, to be very careful how either forced us to throw our weight into the opposite scale —when we may choose peace or war, as our interest, guided by justice, shall dictate.

Why should we forego the advantages of so felicitous a situation? Why quit our own ground to stand upon foreign ground? Why, by interweaving our destiny with any part of Europe, should we entangle our prosperity and peace in the nets of European ambition, rivalship, interest or caprice?

Permanent alliance, intimate connection with any part of the foreign world, is to be avoided; so far, I mean, as we are now at

* and second. † but there.

liberty to do it: for let me never be understood as patronizing infidelity to pre-existing engagements. These must be observed in their true and genuine sense.*

Harmony, liberal intercourse, and commerce with all nations, are recommended by justice, humanity, and interest. But even our commercial policy should hold an equal hand, neither seeking nor granting exclusive favors or preferences—consulting the natural course of things—*diffusing* and *diversifying* by gentle means the streams of commerce, but forcing nothing—establishing with powers so disposed† temporary‡ rules of intercourse, the best that present circumstances and mutual opinion of interest will permit, but temporary; and liable to be abandoned or varied, as time, experience, and future circumstances may dictate—remembering§ that it is folly in one nation to expect disinterested favor in another—that to accept is to part with a portion of its independence, and that it may find itself in the condition of having given equivalents for nominal favors, and of being reproached with ingratitude in the bargain. There can be no greater error in national policy than to desire, expect, or calculate upon real favors. 'Tis an illusion that experience must cure, that a just pride ought to discard.

In offering to you, my countrymen, these counsels of an old and affectionate friend—counsels suggested by laborious reflection, and matured by a various experience, I dare not hope that they will make the strong and lasting impressions I wish—that they will control the current of the passions or prevent our nation from running the course which has hitherto marked the destiny of all nations.

But¶ if they may even produce partial benefit, some occasional

* But 'tis not necessary, nor will it be prudent, to extend them. 'Tis our true policy, as a general principle, to avoid permanent or close alliances. Taking care always to keep ourselves by suitable establishments in a respectably defensive position, we may safely trust to occasional alliances for extraordinary emergencies.

† In order to give to trade a stable course, to define the rights of our merchants, and enable the government to support them.

‡ and conventional.

§ always.

‖ any thing under that character.

¶ I may flatter myself.

good . . . that they sometimes recur to moderate the violence of party spirit—to warn against the evils of foreign intrigue—to guard against the impositions of pretended patriotism—the having offered them, must always afford me a precious consolation.

How far in the execution of my present office I have been guided by the principles which have been recommended,* the public records and the external evidences of my conduct must witness. My conscience assures me that I have at least believed myself to be guided by them.

In reference to the present war of Europe, my proclamation of the 22d of April, 1793, is the key to my plan, sanctioned by your approving voice, and that of your Representatives in Congress—the spirit of that measure has continually governed me—uninfluenced and unawed by the attempts of any of the warring powers, their agents, or partisans, to deter or divert from it.

After deliberate consideration, and the best lights I could obtain (and from men who did not agree in their views of the origin, progress, and nature of that war) I was satisfied that our country, under all the circumstances of the case, had a right and was bound in propriety and interest to take a neutral position. And having taken it, I determined as† should depend on me to maintain it steadily and firmly.‡

Though in reviewing the incidents of my administration, I am unconscious of intentional error—I am yet too sensible of my own deficiencies, not to think it possible§ that I have committed many errors—I deprecate the evils to which they may tend—and fervently implore the Almighty to avert or mitigate them. I shall carry with me, nevertheless, the hope that my motives will continue to be viewed by my country with indulgence, and that after forty-five years of my life, devoted with an upright zeal to the public service, the faults of inadequate abilities will be consigned to oblivion, as myself must soon be, to the mansions of rest.

* "inculcated" for "recommended."

† as far as.

‡ Here a large space is found in the draft evidently left for the insertion of other matter.

§ "probable" for "possible."

Neither ambition nor interest has been the impelling cause of my actions. I never designedly misused any power confided to me. The fortune with which I came into office, is not bettered otherwise than by that improvement in the value of property which the natural progress and peculiar prosperity of our country have produced. I retire* with a pure heart,† with undefiled hands, and with ardent vows for the happiness of a country, the native soil of myself and progenitors for four generations.

FRANCE.

1796.

There are circumstances which render it too probable, that a very delicate state of things is approaching between the United States and France. When threatened with foreign danger, from whatever quarter, it is highly necessary that we should be united at home; and considering our partiality hitherto for France, it is necessary towards this union, that we should understand what has really been the conduct of that country towards us. It is time for plain truths, which can only be unacceptable to the hirelings or dupes of that nation.

France, in our revolution war, took part with us. At first she afforded us secret and rather scanty succors, which wore more the complexion of a disposition to nourish a temporary disturbance in the dominions of a rival power, than of an intention to second a revolution.

The capture of Burgoyne and his army decided the till then hesitating councils of France, produced the acknowledgment of our independence, and treaties of commerce and defensive alli-

* without cause for a blush.

† with no alien sentiment to the ardor of those vows for the happiness of his country, which is so natural to a citizen who sees in it.

ance. These again produced the war which ensued between France and Great Britain.

The co-operation and succor of France after this period was efficient and liberal. They were extremely useful to our cause, and no doubt contributed materially to its success.

The primary motives of France for the assistance she gave us, was obviously to enfeeble a hated and powerful rival, by breaking in pieces the British empire. A secondary motive was to extend her relations of commerce in the new world, and to acquire additional security for her possessions there, by forming a connection with this country when detached from Great Britain. To ascribe to her any other motives—to suppose that she was actuated by friendship towards us, or by a regard for our particular advantage, is to be ignorant of the springs of action which invariably regulate the cabinets of princes. He must be a fool, who can be credulous enough to believe, that a despotic court aided a popular revolution, from regard to liberty or friendship to the principles of such a revolution. In forming the conditions upon which France lent her aid, she was too politic to attempt to take any unworthy advantage of our situation. But they are much mistaken who imagine that she did not take care to make a good bargain for herself. Without granting to us any material privilege in any of her external possessions, she secured in perpetuity a right to participate in our trade, on the foot of the most favored nation. But what is far more important, she, in return for the guarantee of our sovereignty and independence, obtained our guarantee of her West India possessions in every future *defensive* war. This may appear at first sight a mutual and equal advantage, but in its permanent operation it is not so. The guarantee of our sovereignty and independence, which is never likely to be again drawn into question, must hereafter be essentially nominal; while our guarantee of the West India possessions must grow into a solid advantage, increasing in importance as we advance in strength—and exposing us often to the chances of being engaged in wars, in which we may have no direct interest. However this guarantee may be regarded as nominal on our part, in this very early stage of our national

power, it cannot be so in time to come. We shall be able to afford it with effect, and our faith will oblige us to do so.

But whatever were the motives of France, and though the conditions of the alliance may be in their permanent tendency more beneficial to her than to us, it was our duty to be faithful to the engagements which we contracted with her, and it even became us, without scanning too rigidly those motives, to yield ourselves to the impulses of kind and cordial sentiments towards a power, by which we were succored in so perilous a crisis.

Nor should we ever lightly depart from the line of conduct which these principles dictate. But they ought not to be carried so far as to occasion us to shut our eyes against the just causes of complaint which France has given or may hereafter give us. They ought not to blind us to the real nature of any instances of an unfair and unfriendly policy which we have experienced or may hereafter experience from that country. Let us cherish faith, justice, and, as far as possible, good will, but let us not be dupes.

It is certain that in the progress and towards the close of our revolution war, the views of France, in several important particulars, did not accord with our interests—she manifestly favored and intrigued to effect the sacrifice of our pretensions on the Mississippi to Spain. She looked coldly upon our claim to the privileges we enjoy in the cod fisheries; and she patronized our negotiation with Great Britain without the previous *acknowledgment of our independence*:—a conduct which, whatever color of moderation may be attempted to be given to it, can only be rationally explained into the desire of leaving us in such a state of *half peace, half hostility with Great Britain, as would necessarily render us dependent upon France.*

Since the peace every careful observer has been convinced that the policy of the French government has been adverse to our acquiring internally *the consistency of which we were capable*—in other words, a well-constituted and efficient government. Her agents every where supported, and with too little reserve, that feeble and anarchical system, the old confederation;—which had brought us almost to the last stage of national *nothingness*, and

which remained the theme of their eulogies, when every enlightened and virtuous man of this country perceived and acknowledged its radical defects and the necessity of essential alterations.

The truth of all this, of which no vigilant and unbiased friend to his country had before the least doubt, has been fully confirmed to us by the present government of France, which has formally proclaimed to us and to the world the *Machiavellian* conduct of the old governments towards this country; nor can we suspect the promulgation to have been the effect of the enmity of the *new* against the *old* government, for our records and our own observations assure us that there is no misrepresentation.

This disclosure, which has not sufficiently attracted the attention of the American people, is very serious and instructive. Surely it ought to put us upon our guard—to convince us that it is at least possible the succeeding rulers of France may have been on some occasions tinctured with a similar spirit. They ought to remember that the magnanimity and kindness of France and the former government were as much trumpeted by its partisans among us as are now the magnanimity and kindness of the present government. What say facts?

Genet was the first minister sent by the new government to this country. Are there no marks of a policy in his *behavior*, or in his instructions? Did he say to us, or was he instructed to say to us with frankness and fair-dealing—Americans, France wishes your co-operation;—she thinks you bound by your treaty —or by gratitude—or by affinity of principles to afford it? Not a word of all this. The language was—France does not require your assistance; she wishes you to pursue what you think your interest.

What was the conduct? Genet came out with his pocket full of commissions to arm privateers. Arrived at Charlestown, before he had an opportunity of sounding our government, he begins to them, and to fit out privateers from our ports;—certain that this was a practice never to be tolerated by the enemies of France, and that it would infallibly implicate us in the war, our government mildly signifies to him its dis

approbation of the measure. He affects to acquiesce, but still goes on in the same way—very soon in open defiance of the government;—between which and our own citizens he presently endeavors to introduce jealousy and schism. He sets on foot intrigues with our southern and western extremes, and attempts to organize our territory, and to carry on from it military expeditions against the territories of Spain in our neighborhood—a nation with which we were at peace.

It is impossible to doubt that the end of all this was to drag us into the war, with the humiliation of being plunged into it without ever being consulted, and without any volition of our own.

No government or people could have been more horridly treated than we were by this foreign agent. Our Executive, nevertheless, from the strong desire of maintaining good understanding with France, forbore to impute to the French government the conduct of its agent; made the personal with him, and requested his recall. The French government could not refuse our request without a rupture with us, which at that time would have been extremely inconvenient for many plain reasons. The application for the recall accordingly had full success; and the more readily as it arrived shortly after the overthrow of the party (to which *Genet* belonged), and thus afforded another opportunity of exercising vengeance on that devoted party.

But it were to be very credulous to be persuaded that *Genet* acted in this extraordinary manner, from the very beginning, without the authority of the government by which he was sent; and did not the nature of his conduct contain an internal evidence of the source it could be easily traced in the instructions which he published. These instructions demonstrate three things, though the last is couched in very covert terms. 1. That France did not consider us as bound to aid her in the war. 2. That she desired to engage us in it, and the principal bribe was to be large privileges in her West India trade. 3. That if direct negotiation did not succeed, indirect means were to be taken to entangle us in it whether so disposed or not. It is not matter of complaint,

that France should endeavor to engage by fair means our assistance in the war, if she thought it would be useful to her, but it is just matter of bitter complaint that she should attempt against our will to ensnare or drive us into it.

Fauchet succeeded Genet. It was a *meteor* following a *comet*. No very marked *phenomena* distinguish his course. But the little twinkling appearances which here and there are discernible, indicate the same general in him which governed his predecessor. The Executive of our country, in consequence of an insurrection, to which one of them had materially contributed, had publicly arraigned political clubs. *Fauchet*, in opposition, openly patronizes them. At the festivals of these clubs he is always a guest, swallowing toasts full of sedition and hostility to the government. Without examining what is the real tendency of these clubs, without examining even the policy of what is called the President's denunciation of them, it was enough for a foreign minister that the Chief Magistrate of our country had declared them to be occasions of calamity to it. It was neither friendly nor decent in a foreign minister after this, to countenance these institutions. This conduct discovered towards us not only unkindness but contempt. There is the more point in it, as this countenance continued after similar societies had been proscribed in France;—what were destructive poisons there, were in this country salutary medicines. But the hostility of the views of this minister is palpable in that intercepted letter of his, which unveils the treachery of Randolph. We there learn, that he pretended to think it was a duty of patriotism to second the western insurrection; that he knew and approved of a conspiracy which was destined to overthrow the administration of our government, even by the most irregular means.

Another revolution of party in *France* placed *Mr. Adet* in the room of *Mr. Fauchet*. *Mr. Adet* has been more circumspect than either of his predecessors—and perhaps we ought scarcely to impute it to him as matter of reproach, that he openly seconded the opposition in Congress to the treaty concluded with *Great Britain*. This was a measure of a nature to call forth the manœuvres of diplomatic tactics. But if we are wise, we shall

endeavor to estimate rightly the probable motives of whatever displeasure France or her agents may have shown at this measure. Can it be any thing else than a part of the same plan which induced the minister of *Louis XVI.* to advise us to treat with Great Britain without the previous acknowledgment of our Independence? Can it be any thing else than a part of that policy which deems it useful to France, that there should perpetually exist between us and Great Britain germs of discord and quarrel? Is it not manifest that in the eyes of France the unpardonable sin of that treaty is, that it roots up for the present those germs of discord and quarrel? To pretend that the treaty interferes with our engagements with France, is a ridiculous absurdity—for it expressly excepts them. To say that it establishes a course of things hurtful to France in her present struggle, is belied by the very course of things since the treaty—all goes on exactly as it did before.

Those who can justify displeasure in France on this account, are not *Americans*, but *Frenchmen*. They are not fit for being members of an independent nation, but prepared for the al state of colonists. If our government could not without the permission of France terminate its controversies with another foreign power, and settle with it a treaty of commerce, to endure three or four years, our boasted independence is a name. We have only transferred our allegiance! we are slaves!

THE ANSWER.

December 6, 1796.

The French republic have, at various times during the present war, complained of certain principles and decisions of the American government, as being violations of its neutrality, or infractions of the treaty made with France in the year 1778.

These complaints were principally made in the year 1793, and explanations, which till now were deemed satisfactory, were made by Mr. Jefferson's correspondence, in August of that year. They are now not only renewed with great exaggeration, but the French government have directed that it should be done *in the tone of reproach, instead of the language of friendship.* The apparent intention of this menacing tone, at this particular time, is to influence timid minds to vote agreeably to their wishes in the election of President and Vice-President, and probably with this view the memorial was published in the newspapers. This is certainly a practice that must not be permitted. If one foreign minister is permitted to publish what he pleases to the people, in the name of his government, every other foreign minister must be indulged with the same right. What then will be our situation on the election of a President and Vice-President, when the government is insulted, the persons who administer it traduced, and the election menaced by public addresses from these intriguing agents? Poland, that was once a respectable and powerful nation, but is now a nation no longer, is a melancholy example of the dangers of foreign influence in the election of a Chief Magistrate. Eleven millions of people have lost their independence from that cause alone. What would have been the conduct of the French directory, if the American minister had published an elaborate and inflammatory address to the people of France against the government, reprobating the conduct of those in power, and extolling that of the party opposed to them? They would have done as the parliament of England did in 1727, when the emperor's resident presented an insolent memorial to the king, and published it next day in the newspapers. All parties concurred in expressing the highest indignation and resentment at the affront offered to the government by the memorial delivered by Monsieur Palm, and more particularly at his audacious manner of appealing from the government to the people, under the pretext of applying for reparation and redress of supposed injuries. In consequence of an address from both houses, Monsieur Palm was ordered to quit England immediately. And is it not necessary that we should adopt some remedy adequate to

this evil, to avoid those serious consequences which may otherwise be apprehended from it?

The conduct of the American government to preserve its neutrality, has been repeatedly justified by arguments drawn from the law of nations, and in the application of its principles they have gone as far, in every instance, and in one particular instance, farther in favor of France, than the strict rule of neutrality would justify. It would therefore answer no valuable purpose, to state the same principles, and deduce the same consequences, in order to justify ourselves on the same ground, that we have already done: but as the *reproaches* of the French republic are founded on an idea, that our construction and application of the law of nations is erroneous, partial, and inimical, it may be worth while to examine whether we cannot justify ourselves by the example of the French nation itself. I presume a better rule of justification against any charge cannot be required, than the conduct of those who have made it in like cases.

I propose, therefore, to compare the decisions of the American government, in the several points wherein they have been complained of in Mr. Adet's memorial, with the laws of France on the same points.

It is asserted that the American government has violated the 17th article of the treaty of 1778, by arresting French privateers and their prizes; and that it has exercised *shocking persecutions* towards them.

It will be found on an accurate inquiry, that all the prizes brought in under French commissions, that have been restored, have been found to be in one or the other of the following descriptions:

1. Those captured within a marine league of the shores of the United States.

2. When the captured vessel was owned, and principally manned by American citizens.

3. When the capturing vessel was armed in our ports.

As to the jurisdiction exercised by the United States, over the sea contiguous to its shores, all nations claim and exercise such a jurisdiction, and all writers admit this claim to be well

founded: and they have differed in opinion, only as to the distance to which it may extend. Let us see whether France has claimed a greater or less extent of dominion over the sea, than the United States. Valin, the king's advocate at Rochelle, in his new commentary on the marine laws of France, published first in 1761, and again by approbation in 1776,* after mentioning the opinions of many different writers on public law on this subject, says, "as far as the distance of two leagues the sea is the dominion of the sovereign of the neighboring coast; and that whether there be soundings there or not." It is proper to observe this method in favor of states whose coasts are so high that there are no soundings close to the shore, but this does not prevent the extension of the dominion of the sea, *as well as in respect to jurisdiction as the fisheries*, to a greater distance by particular treaties, or the rule herein before mentioned, which extends dominion as far as there are soundings, or as far as the reach of a cannon shot; *which is the rule at present universally acknowledged.* "The effect of this dominion," the same author says, "according to the principles of Puffendorf, which are incontestable, is, that every sovereign has a right to protect foreign commerce in his dominions, as well as to secure them from insult, by preventing others from approaching nearer to a certain distance." In extending our dominion over the sea to one league, we have not extended it so far, as the example of France and the other powers of Europe would have justified. They therefore can have no right to complain of our conduct in this respect.

The second description of cases, which has induced the American government to restore prizes claimed by the French, is when our citizens have made the capture under a French commission.

The third article of the ordinances of the marine of France which the commission now given to French privateers requires to be observed (Valin, vol. 2, 235), is as follows: "We prohibit all our subjects from taking commissions from foreign kings, princes, or states, to arm vessels for war, and to cruise at sea under their colors, unless by our permission, on pain of being treated as pirates." The commentator says these general and indefinite

* Book 5, Title 1.

prohibitions have no exception. They extend to commissions taken from friends or allies, as well as neutrals, and those that are equivocal, and they were considered as necessary consequences of the laws of neutrality.

"If," says Valin, "the commission of the foreign prince be to cruise against *his enemies* who are *our allies, or those with whom we intend to preserve neutrality*, it would afford just ground of complaint on their part, and might lead to a rupture." The rule extends as well to subjects domiciliated as not domiciliated in the kingdom, and foreign countries; "for Frenchmen are not the less Frenchmen, for having gone to live in foreign countries." If France may rightfully prohibit her citizens from accepting foreign commissions to make prize of the property of her friends, why should the United States be *reproached* for exercising a similar right? A necessary consequence of this wise and just prohibition is, that all prizes taken contrary to it should be restored with damages to the party injured.

The third description of prizes restored, is where they have been fitted and armed in the ports of the United States.

I find no direct, positive provision by the marine laws of France, prohibiting this; but the whole tenor of those laws suppose that vessels of war are armed in the ports of the sovereign who gives the commission. French privateers must not only fit out in a French port, but are bound to bring all prizes made by them into some particular port or ports expressed in their commissions. (Valin, vol. 2, 276.) And it is certain that the king of France, previous to his alliance with the United States, delivered up some American prizes to the English, because the capturing vessel had been armed in a French port.

Mr. Adet's memorial charges that the English have been permitted to arm their vessels, and bring their prizes into our ports. As to this charge, the fact is simply denied. In the cases mentioned, the vessels said to have taken in guns for their defence, were gone before he made his representation; yet he complained, and the government did nothing. I ask what could they have done? Mr. Adet will answer, they might have declared war against Great Britain: and it is certain this was the only remedy that

remained in such a case: but neither our interest nor our duty would have permitted us to have adopted it. Our interest did not permit us to give up our neutrality, and engage in a foreign war, the event of which would have produced many and certain evils, and could not by any possibility have produced any good;—and it was contrary to every principle by which a just nation would desire to act, to have made war on a whole people because one or two of them had clandestinely taken arms on board for their defence, in one of our ports, without the knowledge of their government or of ours.

The memorial complains that we have infringed the 17th article of the treaty of 1778, by restraining the prohibition therein contained only to the ships of war and privateers of their enemies, who should come into our ports *with their prizes.*

The literal sense of the 17th article, is, that no armed ship *who shall have made* prizes from the French people, shall receive an asylum in our ports. The 22d article says that no privateer, fitted under a commission of the enemy of either, shall have asylum in the ports of the others. Neither of these articles says any thing of prizes. The literal application of them therefore would exclude the capturing vessels, but give admission to their prizes: which would never have been the intention of the parties. The law of nations expressly adopted by France, relative to the right of asylum, may illustrate these articles of the treaty. Ord. Louis XIV., art XIV., declares, "that no prizes made by captains under a foreign commission, shall remain in our ports longer than twenty-four hours, unless detained by bad weather, or unless the prize have been made from our enemies." But this article, says Valin, is only applicable to prizes carried into a neutral port, "and not at all to armed vessels, whether neutrals or allies, who have taken refuge there, *without prizes*, either to escape the pursuit of enemies, or for any other cause. They may in this case remain as long as they please." By the law of neutrality, simply, French prizes could only have remained twenty-four hours in our ports, but by the treaty they have obtained the privilege of remaining as long as they please. This privilege has not only been allowed them

in its fullest extent, but we had gone a step further, and as a favor permitted them to sell their prizes, which neither the treaty nor the law of nations required; and which was of more importance than all the rest put together. This favor, as favors generally are, is now claimed as a right, and the withholding is considered as an injury. Let us see what the ordinances of the French marine have said on this point. Ord. Louis XIV., Tit. Prizes, Art. XIV. "If in the prizes brought into our ports by vessels armed under a foreign commission, there be any merchandises belonging to our subjects, *or allies*, those belonging to our subjects shall be restored, *and the rest shall not be put into any storehouses, or be purchased by any person under any pretext whatsoever.*" "And all this," says Valin, "is founded on the law of neutrality. By the treaty of Utrecht, Louis XIV. and his grandson the king of Spain, agreed mutually to permit the prizes made by one to be brought in, *and sold* in the ports of the other. But this, the same author says, was only a particular arrangement, so much the less to be proposed for a general rule, as the two nations had given up the duties on prize goods sold in their dominions, which however did not last long, on account of the abuses to which it gave rise. Abuses similar, I presume, to those to which the same permission gave rise in this country. The next ground of complaint is the British treaty and its consequences. This treaty is said to deprive France of all the advantages stipulated in a preceding treaty, and this is done by an abandonment of the modern law of nations.

If we may credit the declaration of the King of France, there were no exclusive advantages stipulated for France in that treaty. His ambassador delivered a paper to the British Court, dated the 13th of March, 1778, wherein, after announcing the treaty between France and the United States, he says: "His majesty declares at the same time, that the contracting parties have paid great attention *not to stipulate any exclusive advantages in favor of the French nation: and that the United States have reserved the liberty of treating with every other nation whatever, upon the same footing of equality and reciprocity.*

The injury supposed to have resulted from an abandonment

of the modern public law, assumes two propositions, neither of which is true: 1st. That neutral ships make neutral property: 2d. That materials for building ships are not among the articles considered as contraband of war. By the marine laws of France, Reg. Dec. 1744, Art. 5, it is directed, that "if there are found on board of neutral vessels, of whatever nation they may be, merchandises or effects, belonging to the enemies of his majesty, they shall be good prize, even though they are not of the growth or manufacture of the enemy's country, but the vessels shall be released." Previous to this regulation, and contrary to the law of nations, as Valin acknowledges, if either the ship or the cargo, or any part of it, was enemy's property, the whole was confiscated by the laws of France. And at this day neutral property on board of enemy's ships is, by the same laws, liable to confiscation.

As to the contraband of war, timber is enumerated among the articles that are so, by Vattel, Lib. iii., chap. vii.; but Valin is much more particular, vol. 2, 264. "In the treaty of commerce concluded with the king of Denmark, the 23d of August, 1724, pitch and tar were declared contraband, *as also rosin, sail-cloth, hemp, cordage, masts and timber, for the building of ships.* There would have been, therefore, no reason to complain of the conduct of the English, if they had not violated particular treaties; *for of right (de droit) these things are contraband at present, and have been so, since the beginning of this century, which was not the case formerly.*" By the modern law of nations, expressly adopted by France, enemies' property, on board neutral ships, is good prize; and by the same law, the number of contraband articles has been increased so as to include the materials for ship-building. All the situations were probably foreseen, in which the treaty might operate favorably or unfavorably for France at the time it was made. It might have been stipulated that materials for ship-building should be deemed contraband, instead of declaring that they should not; or, that the United States should not enter into any treaty in which they should be made so. Neither of these being the case, there is no ground of complaint, except *that the consequence is inconvenient*, at present, to France,

and the belligerent powers allied to her. If timber and naval stores are contraband by the law of nations, to declare them to be so by a treaty cannot be considered as a privilege granted to one nation, or an injury to any other. The French nation will not persist in asserting, that because the exercise of rights which she has claimed as legitimate on former occasions, becomes inconvenient when exercised by others, she may therefore refuse to acknowledge and respect them. This would be the language of an haughty despot, in a conquered country, not of justice, honor, and good faith, from one friend to another.

It is said that the 18th article of the treaty with Great Britain, suspends all the commercial relations between the United States and France, by preventing the supplies looked for by France from this country.

This article has not introduced any new case, in which provisions may be contraband. It only alters the consequence resulting from a seizure of them, when they are so. Valin (vol. 2, 264) says, "By our law and the law of nations, provisions are not prohibited, *except to places besieged or blockaded.*" The article complained of says explicitly, that when provisions, and other articles *not generally contraband*, are become so, *according to the existing law of nations*, and shall, *for that reason*, be seized, they shall not be confiscated, but the owner shall be completely indemnified, and receive besides a reasonable mercantile profit. This principle operated as an encouragement for American vessels to seek the French markets, by insuring them against loss, if they happened in any instance to be interrupted in the voyage. France, I presume, might consider our vessels bound with provisions to a place besieged or blockaded, liable to seizure, after due notice of the fact; if instead of this, they contend for the privilege of paying for them according to the terms of the treaty with Great Britain, I suppose it will not be denied to them. But if, under pretence that a vessel is bound to a besieged or blockaded port, when she is not, either France or Great Britain should seize or detain her, it is an injury not authorized by the treaty or the law of nations. This is what both nations have done, when their interests or necessities required it—sometimes

with, and often without any apology; and what they will often continue to do, I fear, as long as they know we cannot punish them for it.

These injuries are said to have been received while every other object around reminds us of the tyranny of Britain and the generous assistance of France, during the American war.

The generosity of France and the magnitude of the United States have been often suggested by some of our own citizens, and we are now *reproached* with it by France herself. Gratitude is due for favors received; and this virtue may exist among nations as well as among individuals; but the motive of the benefit must be solely the advantage of the party on whom it was conferred, else it ceases to be a favor. There is positive proof that France did not enter into the alliance with us in 1778, *for our advantage*, but for her own. The whole course of the investigation, as well as a positive knowledge of the fact, proves this. She resisted all of our solicitations for effectual assistance for war three years; and rose in her demand during the campaign of 1777, when our affairs presented the most threatening aspect. Memorials were presented in August and September of that year, while General Burgoyne's army arrived in December; fearing we might be able to do the business without them, the French court began to change its tone. In January the British minister gave notice in the House of Commons that he meant to propose terms of accommodation with America. The French ministry on the arrival of this intelligence in France, immediately pressed the conclusion of the treaty which they had resisted for three years, and proposed terms much more favorable for us than those our commissioner had offered, and they had refused three months before. The treaty was signed on the 8th February. I perceive no generosity in all this. They did then, as we have done now, and as every discerning nation will do—they regarded only their own interest and advantage, and not that of any other nation. In the interval between the declaration of independence and the alliance with France, that court sometimes ordered away our privateers, and sometimes restored their prizes. They refused to receive an ambassador or acknowledge our indepen-

dence; all of which was for fear of bringing France prematurely into the war. The fact is, that the French spoke of very different terms, as the condition of their assistance, before the capture of Burgoyne, from those actually agreed on afterwards. There can be no doubt that our success on that occasion, and the disposition it appeared to have produced in the British ministry, were the immediate causes of that alliance. It was certainly the interest of the French to unite with America in the war against Great Britain. They therefore acted right in doing this at last, though with too much refinement in putting it off so long, but it is not the interest of the United States to be engaged in any war whatsoever—much less do they desire to imbrue their hands in the blood of one nation to gratify the hatred, or serve the interest of another. We have acted right hitherto, in laying it down as a principle not to suffer ourselves to be drawn into the wars of Europe; and if we must have a war, I hope it will be for refusing to depart from that principle.

Our government has acted with firmness, consistency, and moderation, in repelling the unjust pretensions of the belligerent powers, as far as reason and argument could have weight. If it has not attempted in every instance, to preserve our rights by force, wherein the remedy would have been worse than the disease, they have not yielded them by concession, in any instance. Into whatsoever hands the administration of the government may now come, they are called on by the suggestions of a wise policy, and the voice of their country, to pursue the same general line of conduct, that has been hitherto pursued, without yielding to the violence of party on either side. They will then be sure of the approbation and support of the most virtuous, which it is to be hoped are the most numerous of all parties. On the contrary, if, departing from these principles, they unnecessarily involve their country in the horrors of war, they will meet the merited execration of good men, and in the end the punishment justly due to such conduct from an injured people.

AMERICANUS.

PART OF WASHINGTON'S SPEECH TO CONGRESS.

First Draft by Hamilton.

December 7th, 1796.

That, among the objects of labor and industry, agriculture, considered with reference either to individual or national welfare, is first in importance, may safely be affirmed, without derogating from the just and real value of any other branch. It is, indeed, the best basis of the prosperity of every other. In proportion as nations progress in population and other circumstances of maturity, this truth forces itself more and more upon the conviction of rulers, and makes the cultivation of the soil more and more an object of public patronage and care. Institutions for promoting it sooner or later grow up, supported by the public purse —and the full fruits of them, when judiciously conceived and directed, have fully justified the undertaking.

Among these, none have been found of greater utility than BOARDS, composed of proper characters, charged with collecting and communicating information, and enabled to stimulate enterprise and experiment by premiums and honorary rewards. These have been found very cheap instruments of immense benefits. They serve to excite a general spirit of discovery and improvement, to stimulate invention, to excite new and useful experiments—and accumulating in one centre the skill and improvement of every part of the nation, they spread it thence over the whole nation, at the same time promoting new discovery, and diffusing generally, the knowledge of all the discoveries which are made.

In the United States, hitherto, no such institution has been essayed, though perhaps no country has stronger motives to it.

Agriculture among us is certainly in a very imperfect state. In much of those parts where there have been early settlements, the soil, impoverished by an unskilful tillage, yields but a scanty reward for the labor bestowed upon it, and leaves its possessors

under strong temptation to abandon it, and emigrate to distant regions, more fertile, because they are newer, and have not yet been exhausted by an unskilful use. This is every way an evil. The undue dislocation of our population from this cause, promotes neither the strength, the opulence, nor the happiness of our country. It strongly admonishes our national councils to apply as far as may be practical, by natural and salutary means, an adequate remedy. Nothing appears to be so unexceptionable, and likely to be more efficacious, than the institution of a Board of Agriculture, with the views I have mentioned, and with a moderate fund towards executing them. After mature reflection, I am persuaded it is difficult to render our country a more precious and general service, than by such an institution.

I will, however, observe, that if it be thought expedient, the objects of the Board may be still more comprehensive. It may embrace the encouragement of the mechanic and manufacturing arts by means analogous to those for the improvement of agriculture, and with an eye to the introduction, from abroad, of useful machinery, &c. Or there may be separate Boards, one charged with one object, the other with the other.

I have, heretofore, suggested the expediency of establishing a National University, and a Military Academy. The vast utility of both these measures presses so seriously and so constantly upon my mind, that I cannot forbear with earnestness to repeat the recommendation.

The assembly to which I address myself, will not doubt that the extension of science and knowledge is an object primarily interesting to our national welfare. To effect this, is most naturally the care of the particular local jurisdictions into which our country is subdivided, as far as regards those branches of instruction which ought to be universally diffused, and it gives pleasure to observe that new progress is continually making in the means employed for this end. But, can it be doubted that the general government would with peculiar propriety occupy itself in affording nutriment to those higher branches of science, which, though not within the reach of general acquisition, are in their consequences and relations productive of general advantage?

Or can it be doubted that this great object would be materially advanced by a university erected on that broad basis to which the national resources are most adequate, and so liberally endowed, as to command the ablest professors in the several branches of liberal knowledge? It is true, and to the honor of our country, that it offers many colleges and academies, highly respectable and useful—but the funds upon which they are established are too narrow to permit any of them to be an adequate substitute for such an institution as is contemplated, and to which they would be excellent auxiliaries. Amongst the motives to such an institution, the assimilation of the principles, opinions, manners, and habits of our countrymen, by drawing from all quarters our youth to participate in a common education, well deserves the attention of government. To render the people of this country as homogeneous as possible, must tend as much as any other circumstance to the permanency of their union and prosperity.

The eligibleness of a military academy depends on that evident maxim of policy, which requires every nation to be prepared for war, while cultivating peace, and warns it against suffering the military spirit and military knowledge wholly to decay. However particular instances, superficially viewed, may seem exceptions, it will not be doubted by any who have attentively considered the subject, that the military art is of a complicated and comprehensive nature; that it demands much previous study, as well as practice, and that the possession of it in its most improved state, is always of vast importance to the security of a nation. It ought, therefore, to be a principal care of every government, however pacific its general policy, to preserve and cultivate—indeed, in proportion as the policy of a country is pacific, and it is little liable to be called to practice the rules of the military art, does it become the duty of the government to take care, by proper institutions, that it be not lost. A military academy instituted on proper principles, would serve to secure to our country, though within a narrow sphere, a solid fund of military information which would always be ready for national emergencies, and would facilitate the diffusion of military knowledge as those emergencies might require.

A systematic plan for the creation of a moderate navy appears to me recommended by very weighty considerations. An active external commerce demands a naval power to protect it, besides the dangers from wars, in which a state is a party. It is a truth, which our own experience has confirmed, that the most equitable and sincere neutrality is not sufficient to exempt a state from the depredations of other nations at war with each other. It is essential to induce them to respect that neutrality, that there shall be an organized force ready to vindicate the national flag. This may even prevent the necessity of going into war by discouraging from those insults and infractions of right, which sometimes proceed to an extreme that leaves no alternative. The United States abound in materials. Their commerce, fast increasing, must proportionably augment the number of their seamen, and give us rapidly the means of a naval power, respectable, if not great. Our relative situation, likewise, for obvious reasons, would render a moderate force very influential, more so, perhaps, than a much greater in the hands of any other power. It is submitted as well deserving consideration, whether it will not be prudent immediately and gradually to provide and lay up magazines of ship-timber, and to build and equip annually, one or more ships of force, as the development of resources shall render convenient and practicable, so that a future war in Europe, if we escape the present storm, may not find our commerce in the defenceless situation in which the present found it.

There is a subject which has dwelt long and much upon my mind, which I cannot omit this opportunity of suggesting. It is the compensation to our public officers, especially those in the most important stations. Every man acquainted with the expense, even of the most frugal plan of living in our great cities, must be sensible of their inadequateness. The impolicy of such defective provisions seems not to have been sufficiently weighed.

No plan of governing is well founded, which does not regard man as a compound of selfish and virtuous passions. To expect him to be wholly guided by the latter, would be as great an error as to suppose him wholly destitute of them. Hence the necessity of adequate rewards for those services of which the

public stand in need. Without them, the affairs of a nation are likely to get sooner or later into incompetent or unfaithful hands. If their own private wealth is to supply in the candidates for public office the deficiency of public liberality, then the sphere of those who can be candidates, especially in a country like ours, is much narrowed, and the chance of a choice of able as well as upright men, much lessened. Besides that, it would be repugnant to the first principles of our government to exclude men from the public trusts, because their talents and virtues, however conspicuous, are unaccompanied by wealth. If the rewards of the government are scanty, those who have talents without wealth, and are too virtuous to abuse their stations, cannot accept public offices without a sacrifice of interest; which, in ordinary times, may hardly be justified by their duty to themselves and their families. If they have talents without virtue, they may, indeed, accept offices to make a dishonest and improper use of them. The tendency then is to transfer the management of public affairs to wealthy, but incapable hands, or to hands which, if capable, are as destitute of integrity as of wealth. For a time, particular circumstances may prevent such a course of things, and hitherto the inference has not been verified in our experience. But it is not the less probable, that time will prove it to be well founded. In some governments men have many allurements to office, exclusive of pecuniary rewards—but from the nature of our government, pecuniary reward is the only aliment to the interested passions which public men who are not vicious can expect. If, then, it be essential to the prosperous course of every government, that it shall be able to command the services of its most able and most virtuous citizens of every class, it follows, that the compensations which our government allows, ought to be revised and materially increased. The character and success of republican government appear absolutely to depend on this policy.

Congress have repeatedly directed their attention to the encouragement of manufactures, and have no doubt promoted them in several branches. The object is of too much importance not to assure a continance of their efforts in every way

which shall appear proper, and conducive to the end. But in the present state of our country, we cannot expect that our progress, in some essential branches, will be as expeditious as the public welfare demands,—particularly in reference to security and defence in time of war. This reflection is the less pleasing when it is remembered how large a proportion of our supply the course of our trade derives from a single nation. It appears very desirable, that at least, with a view to security and defence, some measures more efficacious than have heretofore been adopted, should be taken. As a general rule, manufactories carried on upon public account are to be avoided. But every general rule may admit of exceptions. Where the state of things in our country leaves little expectation that certain branches of manufacture will, for a great length time, be sufficiently cultivated—when these are of a nature to be essential to the furnishing and equipping of the troops and ships of war of which we stand in need—are not establishments on the public account, to the *extent of the public demand* for supply, recommended by very strong considerations of national policy? Ought our country to be dependent in such cases upon foreign supply, precarious because liable to be interrupted?

THE WARNING.

I.

Jan. 27, 1797.

There are appearances too strong not to excite apprehension that the affairs of this country are drawing fast to an eventful crisis. Various circumstances, daily unfolding themselves, authorize a conclusion that France has adopted a system of conduct towards the neutral maritime nations generally, which amounts to little less than actual hostility. I mean the total in-

terruption of their trade with the ports of her enemies; a pretension so violent, and at the same time so oppressive, humiliating, and ruinous to them, that they cannot submit to it, without not only the complete sacrifice of their commerce, but their absolute degradation from the rank of sovereign and independent states.

It seems to have become latterly a primary object in the policy of France to make the principal attack upon Great Britain through her commerce, in order, by extinguishing the sources of her revenue and credit, to disable her from continuing the war, and compel her to accept any conditions of peace which her antagonist may think fit to prescribe. It is to this plan we are to attribute the unjustifiable treatment of Tuscany, in the seizure of Leghorn, and shutting her ports against the English, contrary to the will of her own government. The same plan has dictated the attempts which are understood to have been made to oblige Naples to exclude Great Britain from her ports during the present war. And there have been indications of a design to effect a similar restraint on all the Italian states, and expel the British trade wholly from the Mediterranean. The same object of wounding Great Britain through her commerce, has been promoted by the war into which Spain has been drawn, and may be considered as the principal advantage expected from it; while it is likewise alleged to be the intention to force Portugal to suspend her commercial relations with Great Britain. The late decree forbidding the importation of British manufactures into France, is a further proof of the eagerness with which the policy of destroying the British commerce is pursued; since it is presumable, from the derangement of French manufactures by the war, that there must have been a convenience in the supply which that importation has afforded.

It is obviously to the same origin that we are to trace the decree lately communicated by the French minister to our government, with respect to the intended treatment of the trade of neutrals, and the spoliations which ours has for some time past suffered. While neutral nations were permitted to enjoy securely their rights, besides the direct commerce between them

and the British dominions, the commerce of Great Britain would be carried on in neutral bottoms, even with the countries where it was denied access in British bottoms. It follows, that the abridgment of neutral rights is essential to the scheme of destroying the British commerce. And here we find the true solution of those unfriendly proceedings, on the part of France towards this country, which are hypocritically charged to the account of the treaty with Great Britain, and other acts of pretended infidelity in our government.

Did we need a confirmation of this truth, we should find it in the intelligence lately received from Cadiz. We are informed, through a respectable channel,* that *Danish* and *Swedish*, as well as *American* vessels, carried into that port by French cruisers, have, with their cargoes, been condemned and confiscated by the French consul or tribunal there, on the declared principle of intercepting the trade of neutrals with the ports of the enemies of France. This indiscriminate spoliation of the commerce of neutral powers is a clear proof that France is actuated, not by particular causes of discontent given by our government, but by a general plan of policy.

The practice upon the decree is a comment much broader than the text. The decree purports that France would observe towards neutrals the same conduct which they permitted her enemies to observe towards them. But the practice goes a great deal further. None of the enemies of France, even at the height of their power and presumption, ever pretended totally to cut off the trade of neutrals with her ports. This is a pretension reserved for her, to increase the catalogue of extraordinary examples, of which her revolution has been so fruitful.

The allegations of discontent with this country are evidently a mere coloring to the intended violation of its rights, by treaty as well as by the laws of nations. Some pretext was necessary, and this has been seized. It will probably appear hereafter that *Denmark* and *Sweden* have been mocked with a similar tale of

* Mr. Ignardi, our Consul at Cadiz, lately arrived, who mentioned the fact as here stated, adding, without reserve, that the principle above mentioned is avowed in the correspondence of the French Consul at Cadiz.

grievances. It is, indeed, already understood that Sweden, outraged in the person of her representative, has been obliged to go the length of withdrawing her minister from Paris.

The complaints of France may be regarded principally as weapons furnished to her adherents to defend her cause, notwithstanding the blows she inflicts. Her aim has been, in every instance, to seduce the people from their government, and, by dividing, to conquer and oppress. Hitherto, happily, the potent spells of this political sorcery have, in most countries, been counteracted and dissipated by the sacred flame of patriotism! One melancholy exception serves as a warning to the rest of mankind, to shun the fatal snare. It is, nevertheless, humiliating, that there are men among us depraved enough to make use of the arms she has furnished in her service, and to vindicate her aggressions as the effects of a just resentment, provoked by the ill conduct of our government. But the artifice will not succeed. The eyes of the people of this country are, every day, more and more opened to the true character of the politics of France; and the period is fast approaching when it will be seen in all its intrinsic deformity.

The desire of a power at war to destroy the commerce of its enemy, is a natural effect of the state of war, and while exercised within bounds, consistent with the rights of nations who are not engaged in the contest, is entirely justifiable; but when it manifestly overleaps these bounds, and indulges in palpable violations of neutral rights, without even the color of justification in the usages of war, it becomes an intolerable tyranny, wounds the sovereignty of nations, and calls them to resistance by every motive of self-preservation and self-respect.

The conduct of France, from the commencement of her successes, has, by gradual developments, betrayed a spirit of universal domination; an opinion that she had a right to be the legislatrix of nations; that they are all bound to submit to her mandates, to take from her their moral, political, and religious creeds; that her plastic and regenerating hand is to mould them into whatever shape she thinks fit; and that her interest is to be the sole measure of the rights of the rest of the world. The

specious pretence of enlightening mankind, and reforming their civil institutions, is the varnish to the real design of subjugating them. The vast projects of a Louis XIV. dwindle into insignificance compared with the more gigantic schemes of his republican successors.

Men, well informed and unprejudiced, early discovered the symptoms of this spirit. Reasoning from human nature, they foresaw its growth with success; that from the love of dominion, inherent in the heart of man, the rulers of the most powerful nation in the world, whether a Committee of Safety or a Directory, will for ever aim at an undue empire over other nations; and that this disposition, inflamed as it was by enthusiasm, if encouraged by a continuation of success, would be apt to exhibit itself, during the course of the French revolution, in excesses of which there has been no example since the days of Roman greatness.

Every day confirms the justice of that anticipation. It is now indispensable that the disagreeable and menacing truth should be exposed in full day to the people of America; that they should contemplate it seriously, and prepare their minds for extremities, which nothing short of abject submission may be able to avert. This will serve them as an armor against the machinations of traitorous men, who may wish to make them instruments of the ambition of a foreign power, to persuade them to concur in forging chains for mankind, and to accept, as their award, the despicable privilege of wearing them a day later than others.

Already in certain circles is heard the debasing doctrine, that France is determined to reduce us to the alternative of war with her enemies, or war with herself, and, that it is our interest and safety to elect the former.

There was a time when it was believed that a similar alternative would be imposed by Great Britain. At this crisis there was but one sentiment. The firmest friends of moderation and peace, no less than the noisiest partisans of violence and war, resolved to elect war with that power which should drive us to the election. This resolution was the dictate of morality and

honor, of a just regard to national dignity and independence. If any consideration, in any situation, should degrade us into a different resolution, we, that instant, shake hands with crime and infamy: we descend from the high ground of an independent people, and stoop to the ignominious level of vassals. I trust there are few Americans who would not cheerfully encounter the worst evils of a contest with any nation on earth, rather than subscribe to so shameful an abdication of their rank as men and citizens.

AMERICUS.

II.

February 7, 1797.

Independent of the commands of honor, the coolest calculations of interest forbid our becoming the instruments of the ambition of France, by associating with her in the war. The question is no longer the establishment of liberty on the basis of republican government. This point the enemies of France have ceased to dispute. The question now is whether she shall be aggrandized by new acquisitions, and her enemies reduced by dismemberments, to a degree which may render her the mistress of Europe, and consequently in a great measure of America. This is truly the remaining subject of contention.

They who understood the real strength and resources of France before the present war, knew that she was intrinsically the most powerful nation of Europe. The incidents of the war have displayed this fact in a manner which is the astonishment of the world. If France can finally realize her present plan of aggrandizement, she will attain to a degree of greatness and power, which if not counteracted by internal disorder, will tend to make her the terror and the scourge of nations. The spirit of moderation in a state of overbearing power is a phenomenon which has not yet appeared, and which no wise man will expect ever to see. It is certain that a very different spirit has hitherto marked the career of the new republic; and it is due to truth to add, that

the ardent, impetuous, and military genius of the French, affords perhaps less prospect of such a spirit in them than in any other people.

'Twere therefore contrary to our true interest to assist in building up this colossus to the enormous size at which she aims. 'Twere a policy as short-sighted as mean to seek safety in a subserviency to her views as the price of her clemency. This at best would be but a temporary respite from the rod; if indeed that can be called a respite, which is of itself the sacrifice of a real to a nominal independence.

These reflections are not designed to rouse a spirit of hostility against France, or to inculcate the idea that we ought of choice to participate in the war against her. They are intended merely to fortify the motives of honor, which forbid our stooping to be *compelled*, either to submit without resistance to a virtual war on her part, or to avert her blows by engaging in the war on her side.

When it was the opinion, that France was defending the cause of liberty, it was a decisive argument against embarking with her in the contest, that it would expose us to hazards and evils infinitely disproportioned to the assistance we could render. Now that question plainly is, whether France shall give the law to mankind. The addition of our opposition to her plan could have too little influence upon the event to justify our willingly encountering the certain dangers and mischiefs of the enterprise. 'Tis our true policy to remain at peace, if we can, to negotiate our subjects of complaint as long as they shall be at all negotiable to defer and——

When the indiscriminate seizure of our vessels by British cruisers, under the order of the sixth of November, 1793, had brought our affairs with Great Britain to a crisis, which led to the measure of sending a special envoy to that country to obtain relief and reparation, it was well understood that the issue of that mission was to determine the question of peace or war between the two nations. In like manner, it is to be expected that our Executive will make a solemn and final appeal to the justice and interest of France, will insist in mild, but explicit terms on

the renunciation of the pretension to intercept the lawful commerce of neutrals with the enemies of France, and the institution of some equitable mode of ascertaining and retributing the losses which the exercise of it has inflicted upon our merchants. If the experiment shall fail, there will be nothing left but to repel aggression and defend our commerce and independence. The resolution to do this, will then be imposed on the government by a painful but irresistible necessity, and it were an outrage to the American name and character to doubt that the people of the United States will approve the resolution, and will support it with a constancy worthy of the justice of their cause, and of the glory they have heretofore deserved and acquired.

No! let this never be doubted! the servile minions of France —those who have no sensibility to injury but when it comes from Great Britain, who are unconscious of any rights to be protected against France; who, at a moment when the public safety more than ever demands a strict union between the people and their government, traitorously labor to detach them from it, and to turn against the government, for pretended faults, the resentment which the real oppressions of France ought to inspire;— these wretched men will discover in the end, that they are as insignificant as they are unprincipled. They will find that they have vainly flattered themselves with the co-operation of the great body of those men with whom the spirit of party has hitherto associated them. In such an extremity the adventitious discriminations of party will be lost in the patriotism and pride of the American character. Good citizens of every political denomination will remember that they are Americans; that when their country is in danger, the merit or demerit of particular measures is no longer a question—that it is the duty of all to unite their efforts to guard the national rights, to avert national humiliation, and to withstand the imposition of a foreign yoke. The true and genuine spirit of 1776, not the vile counterfeits of it which so often disgust our eyes and our ears, will warm every truly American heart, and light up in it a noble emulation to maintain inviolate the rights and unsullied the honor of the American nation. It will be proved, to the confusion of all false patriots,

that we did not break the fetters of one foreign tyranny to put on those of another. It will be again proved to the world that we understand our rights, and have the courage to defend them.

But there is still ground to hope that we shall not be driven to this disagreeable extremity. The more deliberate calculations of France will probably rescue us from the present embarrassment. If she perseveres in her plan, she must inevitably add all the neutral powers to the number of her enemies. How will this fulfil the purpose of destroying the commerce of Great Britain? The commerce of those powers with France will then entirely cease, and be turned more extensively into the channels of Great Britain, protected by her navy, with the co-operation of the maritime force of those powers. The result will be the reverse of what is projected by the measure. The commerce and revenue of Britain will, in all likelihood, be augmented rather than diminished; and her arms will receive an important reinforcement. Violent and unjust measures commonly defeat their own purpose. The plan of starving France was of this description, and operated against the views of its projectors. The plan now adopted by France, of cutting off the trade of neutrals with her enemies, alike violent and unjust, will no doubt end in similar disappointment. Let us hope that it will be abandoned, and that ultimate rupture will be avoided; but let us also contemplate the possibility of the contrary, and prepare our minds seriously for the unwelcome event.

AMERICUS.

III.

February 21, 1797.

The Paris accounts inform us, that France has lately exercised towards Genoa an act of atrocious oppression, which is an additional and a striking indication of the domineering and predatory spirit by which she is governed. This little republic, whose territory scarcely extends beyond the walls of her metro-

polis, has been compelled, it seems, to ransom herself from the talons of France by a contribution of nearly a million of dollars, a large sum for her contracted resources. For this boon, "the French government engages on its part to *renounce all claims upon Genoa*, to forget what has passed during the present war, and to forbear any future demands." It would appear from this, that France, to color the odious exaction, besides the pretence of misconduct towards her in the present war, has not disdained to resort to the stale and pitiful device of reviving some antiquated claim upon the country itself. In vain did the signal hazards encountered by Genoa, to preserve her neutrality, in defiance of the host of enemies originally leagued against France—in vain did the character and title of republic plead for a more generous treatment. The attractions of plunder predominated. The spirit of rapine, callous to the touch of justice, blind to the evidence of truth, deaf to the voice of entreaty, had marked out, and devoted the mark. There was no alternative but to compound or perish.

If it be even supposed, though this has never appeared, that at some period of the war, Genoa may be chargeable with acts of questionable propriety in relation to France, it is manifest, that it ought to be attributed to the necessity of a situation which must have obliged her to temporize a very small and feeble state, in the midst of so many great conflicting powers, parts of her territories occupied by armies, which she was unable to oppose; it were a miracle, indeed, if her conduct in every particular, will bear the test of rigorous scrutiny. But if at any time the pressure of circumstances may have occasioned some slight deviation, there is, nevertheless, full evidence of a constant solicitude on the part of Genoa to maintain, to the utmost of her ability, a sincere neutrality. It is impossible to forget the glorious stand which she at one time made against the imperious efforts of Great Britain to force her from her neutral position. The magnanimous and exemplary fortitude, which she displayed on that occasion, excited in this country universal admiration, and must have made a deep impression. 'Tis only to recollect that instance to be satisfied, that the treatment which she has just

experienced from France, merits the indignant execration of mankind. Unfortunate Genoa! how little didst thou imagine that thou wert destined so soon to be compelled to purchase thy safety from the crushing weight of that hand which ought to have been the first to rise in thy defence!

How fruitful at the same time of instruction to us is this painful example! The most infatuated partisans of France cannot but see in it an unequivocal proof of the rapacious and vindictive policy which dictates her measures. All men must see in it, that the flagrant injuries which we are now suffering from her, proceed from a general plan of domination and plunder; from a disposition to prostrate nations at her feet; to trample upon their necks; to ravish from them whatever her avidity or convenience may think fit to dedicate to her own use.

The last intelligence from France seems to dispel the doubt whether the depredations in the West Indies may not have resulted from misapprehension or abuse of the orders of the French Government. It is now understood to be a fact, that the cruisers of France every where are authorized to capture and bring in all vessels bound to the ports of her enemies.

This plan is pregnant with the worst evils, which are to be dreaded from the declared and unqualified hostility of any foreign power. If France, after being properly called upon to renounce it, shall persevere in the measure, there cannot be a question, but that open war will be preferable to such a state. By whatever name treachery or pusillanimity may attempt to disguise it, 'tis in fact war, war of the worst kind, *war on one side*. If we can be induced to submit to it longer than is necessary to ascertain that it cannot be averted by negotiation, we are undone as a people. Whether our determination shall be to loop up our trade by embargoes, or to permit our commerce to continue to float an unprotected prey to French cruisers, our degradation and ruin will be equally complete. The destruction of our navigation and commerce, the annihilation of our mercantile capital, the dispersion and loss of our seamen, obliged to emigrate for subsistence, the extinction of our revenue, the fall of

public credit, the stagnation of every species of industry, the general impoverishment of our citizens, these will be minor evils in the dreadful catalogue. Some years of security and exertion might repair them. But the humiliation of the American mind would be a lasting and a mortal disease in our social habit. Mental debasement is the greatest misfortune that can befall a people. The most pernicious of conquests which a state can experience is a conquest over that just and elevated sense of its own rights which inspires a due sensibility to insult and injury, over that virtuous and generous pride of character, which prefers any peril or sacrifice to a final submission to oppression, and which regards national ignominy as the greatest of national calamities.

The records of history contain numerous proofs of this truth. But an appeal to them is unnecessary. Holland and Italy present to our immediate observation, examples as decisive as they are deplorable. The former within the last ten years has undergone two revolutions by the intervention of foreign powers, without even a serious struggle. Mutilated of precious portions of its territory at home by pretended benefactors but real despoilers, its dominions abroad slide into the possession of its enemies rather as derelicts than as the acquisitions of victory. Its fleets surrender without a blow. Important only by the spoils which it offers no less to its friends than to its enemies, every symptom in its affairs is portentous of national annihilation. With regard to Italy, 'tis sufficient to say, that she is debased enough, not even to dare to take part in a contest, on which, at this moment, her destiny is suspended.

Moderation in every nation is a virtue. In weak or young nations, it is often wise to take every chance by patience and address to divert hostility, and in this view to *hold parley* with insult and injury—but to *capitulate* with oppression, or rather to surrender to it at discretion, is in any nation, that has any power of resistance, at all times as foolish as it is contemptible. The honor of a nation is its life. Deliberately to abandon it, is to commit an act of political suicide. There is treason in the

sentiment, avowed in the language of some, and betrayed by the conduct of others, that we ought to bear any thing from France, rather than go to war with her. The nation, which can prefer disgrace to danger is prepared for a *Master* and deserves one.

AMERICUS.

IV.

February 27th, 1797.

The emissaries of France when driven to every other expedient for extenuating her depredations, have a last refuge in the example of Great Britain. The treatment which we now receive from France (say they) is not worse than that which we have received from Great Britain. If this apology were founded in fact, it would still be a miserable subterfuge. For what excuse is it to France or what consolation to us, that she, our boasted friend and benefactress, treats us only not worse than a power which is stigmatized as an envious rival and an implacable foe?

The conduct of Great Britain, appealed to in justification of France, was admitted by all to be inexcusable. For Gallic faction thought it so extreme as to call for immediate reprisals. The real patriots differed from them only in thinking, that an armed negotiation, to end in reprisals, if unattended with success, was preferable to immediate hostility. How dare the men, who at that period were the clamorous champions of our national dignity, how dare they (I ask) now to stand forth the preachers not of moderation (for in the propriety of this all unite) but of tame submission,—of a servility abject enough to love and cherish the hand which despoils us, to kiss the rod which stings us with unprovoked lashes? What logic, what magic, can render innocent or venial in France that which was so criminal and odious in Great Britain?

The pretext (we know) of France is, that we have permitted Great Britain to treat us in the same manner, and her deluded

or debauched adherents are mean or prostrate enough to re-echo the excuse.

Let us grant, for argument sake, all that can be pretended on this subject, namely, that through want of energy in our administration, or from the opinion which it entertained of the situation of the country, there has been too much patience under the oppressions of Great Britain—Is this really a justification to France? Is a defect of vigor in the government of one country, or an underestimate of its means for repelling injury, a sufficient cause for another government, lavish in profession of friendship, to imitate towards it the aggressions which it has suffered from an oppressor? What in private life would be said of that man, who called himself the friend of another, because the last had too passively allowed a third, the enemy of both, to wrest from him a portion of his property, should deduce from this a pretext to strip him of the remainder? Has language epithets too severe for such a character? Is not the guilt of unjust violence in a case like this aggravated by that of hypocrisy and perfidy?

But this is not our only reply. The truth is (and a truth we may boldly proclaim) that we never did tolerate the aggressions of Great Britain; that we have steadily resisted them, and resisted them with success. In the respectable attitude of an armed negotiation, seconded by the self-denying and very influential measure of an embargo, we sent to demand a revocation of the orders under which we suffered, and retribution for the losses which we had sustained. The orders were revoked and the retribution has been stipulated, and the stipulation is in a course of honorable and liberal execution. The redress of ancient grievances, on the ground of a reciprocity, demanded by every principle of rectitude, has been superadded to that of more recent ones.

Our flags at this moment proudly wave on the ramparts which had been so long detained from us; and Indian butcheries along the whole extent of our vast frontier have been terminated. More than this—the redress obtained from Great Britain was a principal cause of the happy accommodation of our dispute with Spain, of the recognition of our right to navigate the Mississippi, and of the establishment of a Southern boundary equal to our

most sanguine wishes.* These are the fruits (and immense fruits they are) of a vigorous though temperate resistance to the aggressions of Great Britain.

'Tis therefore in every sense false, that our government has *permitted* Great Britain *to do* as France is now *doing*. Except here and there the accidental irregularity of the commander of a particular ship, there is not one clear right which the law of nations entitle us to claim, that is not now respected by Great Britain, and to a degree unusual in the history of the treatment of neutral nations by great belligerent powers.

It follows that the suggestion on which France bottoms her ill-treatment of us is a frivolous and a colorless pretext. 'Tis to confound all just ideas, to consider a temporary forbearance as a permission or acquiescence—to pretend, above all, to retaliate that injury after it has passed, has ceased, and has been redressed. We are bound then to conclude, that our real crime in the eyes of France is, that we had the temerity to think and to act for ourselves, and did not plunge headlong into war with Great Britain; —that the principal streams of our commerce, from the natural relations of demand and supply, flow through the channels of her commerce, and that the booty which it offers to rapacity, exceeds the organized means of protection.

But a country, containing five millions of people, the second in the number of its seamen, that prime sinew of maritime force, with a varied industry, and an export of sixty millions, understanding its rights, not deficient in spirit to vindicate them, if compelled against its will to exert its strength and resources, will, under the guidance of faithful and patriotic counsels, be at no loss to convince its despoilers, that there is as much folly as wickedness in such a calculation. This reflection ought at once to console and to animate us; though the remembrance of former friend-

* This consequence was foreseen and foretold. And the prediction is confirmed by that part of the declaration of war of Spain against Great Britain, which makes it a charge against the latter, that in the treaty with the United States "she had no respect or consideration for the known rights of Spain," and in the sudden disappearance after that treaty, of the obstacles which had so long impeded our negotiation with Spain.

ship, and a spirit of virtuous moderation, will induce us still to wish that there may be some error in appearances—that the views of France are not as violent and as hostile as they seem to be—that an amicable explanation may yet dispel the impending clouds, and brighten the political horizon with a happy reconciliation.

AMERICUS.

V.

March 13th, 1797.

I have asserted, that the conduct of Great Britain towards us and other neutral powers has been at no period so exceptionable, as that of France at the present juncture. A more distinct view of this truth may be useful, which will be assisted by a retrospect of the principal acts of violation on both sides.

Though the circumstances were cotemporarily disclosed in all our newspapers, yet so blind and deaf were we rendered by our partiality for France, that few among us, till very lately, have been aware, that the first of those acts is fairly chargeable upon her. Such, notwithstanding, is the fact. The first in order of time is a decree of the National Convention of the 9th of May, 1793, which reciting that neutral flags are not respected by the enemies of France, and enumerating some instances of alleged violation, proceeds to authorize the vessels of war and cruisers of France to arrest and conduct into her ports *all neutral vessels* which are found *laden* in *whole* or in *part* with *provisions belonging to neutrals*, or *merchandises* belonging to the *enemies* of France, the latter to be confiscated as prize for the benefit of the captors, the former to be detained, but paid for according to their value at the places for which they were destined.

The instances enumerated as the pretext for so direct and formal an attack upon the rights of neutral powers, except two, turn upon the pretension to capture goods of an enemy in the ships of a friend. Of the remaining two, one is the case of an

American vessel going from *Falmouth* to *St. Maloes* with a cargo of wheat, which the decree states was taken by an English frigate and carried into Germany, where the agents of the English government detained the cargo, upon a promise to pay the value, as not being for French account; the other is the case of some French passengers going in a *Genoese* vessel from *Cadiz* to *Bayonne*, who were plundered on the passage by the crew of an English privateer.

There is no question but that Great Britain, from the beginning of the war, has claimed and exercised the right of capturing the property of her enemies found in neutral bottoms, and it has been unanswerably demonstrated, that for this she has the sanction of the general law of nations. But France, from the exercise of that right by Great Britain, when not forbidden by any treaty, can certainly derive no justification for the imitation of the practice, in opposition to the precise and peremptory stipulations of her treaties. Every treaty which established the rule of "*free ships free goods*," must have contemplated the unequal operation of that rule to the contracting parties, when one was at peace, the other at war; looking for indemnification to the correspondent of taking friends' property in enemies' ships, and to the reciprocal effect of the rule when the state of peace and war should be reversed. To make its unequal operation in an existing war an excuse for disregarding the rule, is therefore a subterfuge for a breach of faith, which hardly seeks to save appearances. France, as she once was, would have blushed to use it. It is one, among many instances, of the attempts of revolutionary France to dogmatize mankind out of its reason, as if she expected to work a change in the faculties as well as in the habits and opinions of men.

The case of the American vessel carried to Guernsey is that of a clear infraction of neutral right. But standing singly, it was insufficient evidence of a plan of the British government to pursue the principle. It countenanced *suspicion* of a secret order for the purpose; but it did not amount to *proof* of such an order. There might have been misapprehension or misrepresentation; or if neither was the case, the circumstance was resolvable into

the mere irregularity of particular agents—it is unjustifiable to ascribe to a government, as the result of a premeditated plan, and to use as the ground of reprisals, a single case of irregularity happening in a detached portion of the dominions of that government. France was bound to have waited for more full evidence. There was no warrant in a solitary precedent for general retaliation; even if we could admit the detestable doctrine, that the injustice of one belligerent power towards neutral nations is a warrant for similar injustice in another.

The violation of the courtesy of war in the instance of the French passengers, however brutal in itself, was truly a frivolous pretext for the decree. The frequency of irregular conduct in the commanders and crews of privateers, even in contempt of the regulations of their own governments, naturally explains such a transaction into the cupidity of individuals, and forbids the imputation of it to their governments. There never was a war in which similar outrages did not occur in spite of the most sincere endeavors to prevent them.

The natural and plain conclusion is, that the decree in question was a wanton proceeding in the French government, uncountenanced by the previous conduct either of its enemies, or of the neutral nations who were destined to punishment for their faults.

For, the first order of the British government authorizing the seizure of provisions is dated the sixth of June, 1793, nearly a month posterior to the French decree. As there is not the least vestige of any prior order, the presumption is that none ever existed. If any had existed, the course of things has been such as to afford a moral certainty that it would have appeared. The subsequent date of the British order is a strong confirmation of the argument, that the affair of the vessel carried to Guernsey was nothing more than a particular irregularity.

The publicity of all the proceedings of the French government, and the celerity of communication between Paris and London, leave no doubt that the decree of May the 9th, was known in London before the order of June the 6th. It follows, that France herself furnished to Great Britain the example and the

pretext for the most odious of the measures with which she is chargeable: and, that so far as precedent can justify crime, Great Britain may find in the conduct of France the vindication of her own.

An obvious reflection presents itself. How great was the infatuation of France thus to set the example of an interruption of neutral commerce in provisions, in the freedom of which she was so much more interested than her adversaries. If the detention of the cargo at Guernsey was a bait, we cannot but be astonished at the stupid levity with which it was swallowed.

We are no less struck with the eager precipitancy with which France seized the pretext for a formal and systematic invasion of the rights of neutral powers; equally regardless of the obligations of treaty and of the injunctions of the laws of nations. The presumption of the connivance of the neutral power in infractions of its rights is the only colorable ground for the French idea of retaliation on the sufferers. Here the yet early stage of the war and the recency of the facts alleged as motives to the decree, preclude the supposition of connivance. The unjust violence of France, consequently, in resorting to retaliation, stands without the slightest veil. From this prominent trait we may distinguish, without possibility of mistake, the real character of her system.

AMERICUS.

VI.

March 27. 1797.

It has been seen that the government of France has an indisputable title to the culpable pre-eminence of having taken lead in the violation of neutral rights; and that the first instance on the part of the British government, is nearly a month posterior to the commencement of the evil by France. But it was not only posterior, it was also less comprehensive, that of

France extended to *all provisions*, that of Great Britain to certain kinds only, CORN, FLOUR, and MEAL.

The French decree, as to the United States, was repeatedly suspended and revived. As to other neutral nations, it continued a permanent precedent to sanction the practice of Great Britain.

This decretal versatility is alone complete evidence of want of principle. It is the more censurable, because it is ascertained that it proceeded, in part at least, from a corrupt source. The sacred power of law-making became the minister and the accomplice of private rapine. Decrees exacted by the solemn obligations of treaty, were sacrificed to sea rovers—to enable them to enjoy the prey, for the seizure of which they ought to have been condignly punished.*

The next and most injurious of the acts of Great Britain is the order of the 6th of November, 1793, which instructs the commanders of ships of war and privateers to stop, detain, and carry in for adjudication all ships, *laden* with the *produce* of any French colony, or carrying *provisions* or other supplies for the use of such colony. It was under the cover of this order, that were committed the numerous depredations on our commerce, which were the immediate cause of sending an envoy to Great Britain.

The terms of this order were ambiguous, warranting a suspicion that they were designed to admit of an oppressive interpretation, and yet to leave room for a disavowal of it. Whether this was really the case, or whether the order was in fact misconstrued by the British officers and tribunals in the West Indies, it is certain that the British government, almost as soon as their construction was known in England, not only disclaimed it, but issued a new order, dated the first of January, 1794, revoking that of the sixth of November, and expressly restraining the power to detain and carry in vessels for

* The report of the Secretary of State mentions (as was known at the time) that one repeal was effected by the influence of the owners of a privateer, which had captured the valuable American ship Laurens, to give effect to her condemnation.

adjudication to *such* as were laden with the *produce* of a *French island* going from a port in the island to a port in Europe, to *such* as were *laden with the like produce belonging to subjects of France* whithersoever bound, to *such* as were *laden* in whole or in part *with naval or military stores bound to a French island.*

This last order obviated in a great measure the mischief of the former; and though its principles were in some respect such as we ought never to recognize, yet were they conformable with the practice of the principal maritime powers in antecedent modern wars, especially of France and Great Britain.

These acts comprise the whole of those on which the British the spoliations have been founded. Taken with all the latitude of construction adopted by the British officers and courts in the West Indies, they amount to this, and to no more,—"*the seizure and appropriations of our corn, flour, and meal, going to a French port, on the condition of paying for them—the seizure and confiscation of our vessels* with their cargoes, when *laden* with the *produce* of a *French colony*, or in the act of carrying provisions or other supplies for the use of such colony." Our trade with France herself, except in corn, flour, and meal, and in contraband articles, has in the worst of times remained unmolested, and has even been allowed to be carried on directly from British ports.

Iniquitous and oppressive as were the acts of Great Britain, how very far short do they fall of the more iniquitous and oppressive decrees of France: as these have been construed and acted upon, not only by the colonial administrations, but by some of its tribunals in Europe! The decree of the second of July, 1796, purports in substance, that France will treat the neutral powers as they have permitted her enemies to treat them. But under this masked battery the whole of our trade with the enemies of France has been assailed. The two edicts of her proconsuls in the West Indies* proclaim the capture of all neutral vessels bound to or coming from English ports, and the uniform consequence is confiscation of vessel and cargo. We

* Santhonax and Co., November 27th, 1796. Victor Hugues, 13th Pluviose, 5th year of the Republic.

are now likewise officially informed that a French consular tribunal at Cadiz has condemned neutral vessels carried in there on the same broad principle. The evil to us has been magnified by various aggravations. Our vessels going from one neutral port to another, even our vessels going from French ports, have been the victims of the piratical spirit which dictated those edicts. Outrage, imprisonment, fetters, disease and death, inflicted or brought upon the commanders and crews of our vessels, cause the bitter cup of our sufferings to overflow, and leave the imagination at a loss for a parallel without seeking for it in the ferocious regions of Barbary.

The ambiguity of the British order of November was a just subject of reproach to its authors. What shall be said of the perfidious ambiguity of the French decree of the 2d of July, 1796? When retaliation of the partial injuries which neutral nations had suffered from the enemies of France was denounced, who could have dreamt that an universal war on their trade was meditated? Who that has a spark of the American in his soul can refuse his utmost indignation, as well at the manner as at the matter of this atrocious proceeding? Not only the partisans of France, the advocates for the honor of republican government, but the friends of human nature, must desire that the final explanation may reject, as a criminal abuse, the practice upon that decree, and repair as far as possible the mischiefs which it has occasioned.

But the treaty with Great Britain, (still exclaim the dupes or hirelings of France,) that abominable instrument is the Pandora's box from which all our misfortunes issue. When that instrument was confirmed, who could have expected any thing better?

Peace, ye seduced or seducing babblers! Had Denmark or Sweden any share in making that reprobated treaty? Besides the refutation of your flimsy pretence, by the ill-treatment in other shapes of several of the neutral powers in Europe—by the information from Cadiz of the indiscriminate seizure and condemnation of neutral vessels going to or coming from English ports—do ye not read in the recent accounts from St. Bartholo-

mews, a *Swedish* island, that not *Americans* only, that *Danes*, that Swedes, that all the neutral nations partake in the common calamity—alike the prey of a devouring rapacity? Will ye still then insist on the barefaced imposture of ascribing to the treaty grievances which are the mere effects of a spirit of oppression and rapine? Read the letter of Mr. Shipwith to Mr. Monroe, dated at Paris, the third of October, 1794, *prior* to the signature of the treaty by Mr. Jay. Remember that he is an American agent, acting under the eye of an American minister, and that both the minister and the agent are distinguished by a partiality for France, which exempts them from the suspicion of exaggerating her misdeeds. What does that letter tell us? Why, in express terms, that "INNUMERABLE embarrassments and difficulties had for a long time oppressed our commerce *in different ports of the republic*—that if the French government did not soon remedy the *incessant abuses and vexations* practised *daily* upon our merchants, *the trade of the United States with France* must cease." Hence may we learn, that long before our treaty with Great Britain, the vexations of our trade in the ports of France were so extreme, as to have become intolerable;—that "the indiscriminate capture of our vessels at sea by the vessels of war of the Republic,"* formed only one class of the injuries which our commerce had sustained: in a word, that the predatory system of France existed before the treaty, and has only of late acquired greater activity from the cravings of an exhausted treasury.

The man who, after this mass of evidence, shall be the apologist of France, and the calumniator of his own government, is not an American. The choice for him lies between being deemed a fool, a madman, or a traitor.

* This is also a passage verbatim from Mr. Shipwith's letter—and he produces a long list of cases to support his assertions.

THE STAND.

I.

March 30, 1798.

The enlightened friends of America never saw greater occasion of disquietude than at the present juncture. Our nation, through its official organs, has been treated with studied contempt and systematic insult: essential rights of the country are perseveringly violated, and its independence and liberty eventually threatened, by the most flagitious, despotic, and vindictive government that ever disgraced the annals of mankind; by a government marching with hasty and colossal strides to universal empire—and in the execution of this hideous project, wielding with absolute authority the whole physical force of the most enthralled, but most powerful nation on earth. In a situation like this, how great is the cause to lament, how afflicting to every heart, alive to the honor and interests of its country, to observe, that distracted and inefficient councils, that a palsied and unconscious state of the public mind, afford too little assurance of measures adequate either to the urgency of the evils which are felt, or to the magnitude of the dangers which are in prospect.

When Great Britain attempted to wrest from us those rights, without which we must have descended from the rank of freemen, a keen and strong sense of injury and danger ran with electric swiftness through the breasts of our citizens. The mass and weight of talents, property, and character, hastened to confederate in the public cause. The great body of our community every where burnt with a holy zeal to defend it, and were eager to make sacrifices on the altar of their country.

If the nation with which we were called to contend was then the preponderating power of Europe; if by her great wealth and the success of her arms she was in a condition to bias or to awe the cabinets of princes; if her fleets covered and domineered over the ocean, facilitating depredation and invasion; if the

penalties of rebellion hung over an unsuccessful contest; if America was yet in the cradle of her political existence; if her population little exceeded two millions; if she was without government, without fleets or armies, arsenals, or magazines, without military knowledge; still her citizens had a just and elevated sense of her rights, were thoroughly awake to the violence and injustice of the attack upon them; saw the conduct of her adversary without apology or extenuation; and under the impulse of these impressions and views, determined, with little short of unanimity, to brave every hazard in her defence.

This magnanimous spirit was the sure pledge that all the energies of the country would be exerted to bring all its resources into action; that whatever was possible would be done towards effectual opposition; and this, combined with the immense advantage of distance, warranted the expectation of ultimate success. The event justified the expectation and rewarded the glorious spirit from which it was derived.

Far different is the picture of our present situation! The five tyrants of France, after binding in chains their own countrymen, after prostrating surrounding nations, and vanquishing all external resistance to the revolutionary despotism at home, without the shadow of necessity, with no discernible motive, other than to confirm their usurpation and extend the sphere of their domination abroad—these implacable tyrants obstinately and remorselessly persist in prolonging the calamities of mankind, and seem resolved, as far as they can, to multiply and perpetuate them. Acting upon the pretension to universal empire, they have at length in fact, though not in name, decreed war against all nations not in league with themselves; and towards this country in particular, they add to a long train of unprovoked aggressions and affronts the insupportable outrage of refusing to receive the extraordinary ambassadors whom we sent to endeavor to appease and conciliate. Thus have they, in regard to us, filled up the measure of national insult and humiliation. 'Tis not in their power, unless we are accomplices in the design, to sink us lower. 'Tis only in our own power to do this by an abject submission to their will.

But though a knowledge of the true character of the citizens of this country will not permit it to be suspected that a majority either in our public councils or in the community can be so degraded or infatuated; yet to the firm and independent lover of his country, there are appearances at once mortifying and alarming.

Among those who divide our legislative councils, we perceive hitherto, on the one side, unremitting efforts to justify or excuse the despots of France, to vilify and discredit our own government, of course to destroy its necessary vigor, and to distract the opinions and to damp the zeal of our citizens—what is worse, to divert their affections from their own to a foreign country; on the other side, we have as yet seen neither expanded views of our situation, nor measures at all proportioned to the seriousness and extent of the danger. While our independence is menaced, little more is heard than of guarding our trade, and this too in very feeble and tremulous accents.

In the community, though in a sounder state than its representatives, we discover the vestiges of the same divisions which enervate our councils. A few—happily, a contemptible few—prostituted to a foreign enemy, seem willing that their country should become a province to France. Some of these dare even to insinuate the treasonable and parricidal sentiment, that in case of invasion they would join the standard of France. Another and a more considerable part are weak enough to appear disposed to sacrifice our commerce, to endure every indignity, and even to become tributary, rather than to encounter war or to increase the chances of it; as if a nation could preserve any rights—could even retain its freedom—which should conduct itself on the principle of passive obedience to injury and outrage; as if the debasement of the public mind did not include the debasement of the individual mind, and the dereliction of whatever adorns or exalts human nature; as if there could be any security in compounding with tyranny and injustice by degrading compliances; as if submission to the existing violations of our sovereignty would not invite still greater, and whet the appetite to devour us by the allurement of an unresisting prey; as if war was ever

to be averted by betraying unequivocally a pusillanimous dread of it as the greatest of all evils.

This country had doubtless powerful motives to cultivate peace. It is its policy, for the sake of this object, to go a great way in yielding secondary interests, and to meet injury with patience, as long as it could be done without the manifest abandonment of essential rights—without absolute dishonor. But to do more than this is suicide in any people who have the least chance of contending with effect. The conduct of our government has corresponded with the cogent inducements to a pacific system. Towards Great Britain it displayed forbearance—towards France it hath shown humility. In the case of Great Britain its moderation was attended with success. But the inexorable arrogance and rapacity of the oppressors of unhappy France bar all the avenues to reconciliation as well as to redress, accumulating upon us injury and insult, till there is no choice left but between resistance and infamy. My countrymen, can ye hesitate which to prefer? Can ye consent to taste the brutalizing cup of disgrace; to wear the livery of foreign masters; to put on the hateful fetters of foreign bondage? Will it make any difference to you that the badge of your servitude is a cap rather than an [illegible]? Will tyranny be less odious because five instead of one inflict the rod? What is there to deter you from the manful vindication of your rights and your honor?

With an immense ocean rolling between the United States and France; with ample materials for ship-building, and a body of hardy seamen more numerous and more expert than France can boast; with a population exceeding five millions, spread over a wide extent of country, offering no one point, the seizure of which, as of the great capitals of Europe, might decide the issue; with a soil liberal of all the productions that give strength and resource; with the rudiments of the most essential manufactures, capable of being developed in proportion to our want; with a numerous, and, in many quarters, well appointed militia; with respectable revenues and a flourishing credit; with many of the principal sources of taxation yet untouched; with considerable arsenals, and the means of extending them; with

experienced officers ready to form an army under the command of the same illustrious chief who before led them to victory and glory, and who, if the occasion should require it, could not hesitate to obey the summons of his country; what a striking and encouraging contrast does this situation in many respects present, to that in which we defied the thunder of Britain! What is there in it to excuse or palliate the cowardice and baseness of a tame surrender of our rights to France?

The question is unnecessary. The people of America are neither idiots nor dastards. They did not break one yoke to put on another. Though a portion of them have been hitherto misled; yet not even these, still less the great body of the nation can be long unaware of the true situation, or blind to the treacherous arts by which they are attempted to be hoodwinked. The unfaithful and guilty leaders of a foreign faction, unmasked in all their intrinsic deformity, must quickly shrink from the scene appalled and confounded. The virtuous whom they have led astray will renounce their exotic standard. Honest men of all parties will unite to maintain and defend the honor and the sovereignty of their country.

The crisis demands it. 'Tis folly to dissemble. The despots of France are waging war against us. Intoxicated with success and the inordinate love of power, they virtually threaten our independence. All amicable means have in vain been tried towards accommodation. The problem now to be solved is whether we will maintain or surrender our sovereignty. To maintain it with firmness is the most sacred of duties, the most glorious of tasks. The happiness of our country, the honor of the American name demands it; the genius of independence exhorts to it; the secret mourning voice of oppressed millions in the very country whose despots menace us, admonish to it by their suffering example; the offended dignity of man commands us not to be accessory to its further degradation; reverence to the Supreme Governor of the universe enjoins us not to bow the knee to the modern Titans* who erect their impious crests against him and vainly imagine they can subvert his eternal throne.

* A race of giants fabled of old to have made war on heaven.

But 'tis not enough to resist. 'Tis requisite to resist with energy. That will be a narrow view of our situation which does not contemplate that we may be called, at our very doors, to defend our independence and liberty, and which does not provide against it by bringing into activity and completely organizing all the resources of our country. A respectable naval force ought to protect our commerce, and a respectable army ought both to diminish the temptation to invasion, by lessening the apparent chance of success, and to guarantee us not only against the signal success of such an attempt, but against the serious though partial calamities, which in that case would certainly await us if we have to rely on militia alone against the enterprises of veteran troops, drenched in blood and slaughter, and led by a skilful and daring chief.

TITUS MANLIUS.

II.

April, 4. 1798.

The description of *vice*, by a celebrated poet, may aptly be applied to the Revolutionary Government of France. It is

> "A monster of such horrid mien
> As to be *hated* needs but to be *seen*."

Unfortunately however for mankind, a species of moral pestilence has so far disordered the mental eye of a considerable portion of it, as to prevent a distinct view of the deformities of this prodigy of human wickedness and folly. It is the misfortune of this country in particular, that too many among its citizens have seen the monster, in all its dreadful transformations, with complacency or toleration. Nor is it among the least of the contradictions of the human mind, that a religious, moral, and sober people should have regarded with indulgence so frightful a volcano of atheism, depravity and absurdity; that a gentle and humane people should

have viewed without detestation, so hateful an instrument of cruelty and bloodshed; that a people having an enlightened and ardent attachment to genuine liberty, should have contemplated without horror so tremendous an engine of despotism and slavery. The film indeed begins to be removed, but the vision of many of those who have been under its influence is not yet restored to the necessary energy or clearness.

It is of the last importance to our national safety and welfare, that the remaining obscurity should be speedily dispelled. Till this shall be the case, we shall stand on the brink of a precipice.

To exhibit the hydra in all its horrible pre-eminence of guilt and mischief, would require volumes. Slight sketches, chiefly to portray its character in reference to other nations, are all that will comport with the plan of these papers.

In retracing the progress of a war which has immersed Europe in blood and calamity, it is an error as common as it is strange to acquit France of responsibility, and throw the whole blame upon her adversaries. This is a principal source of the indulgence which is shown to the extravagances and enormities of her revolution. And yet the plainest facts demonstrate that the reverse of this supposition is far more agreeable to truth. It required all the bold imposing pretences of the demagogues of France, all the docile partiality of a warm admiration for her revolution, to have secured a moment's success to so glaring a deception.

The origin of the war is usually charged to the treaty of Pilnitz and to the counter-revolutionary projects of the parties to it.

To this day we are without authentic and accurate evidence of the nature of that treaty. Taking its existence for granted there is not the least proof that it comprehended any other powers than Austria, Prussia, and Sardinia. Beyond these therefore unless suspicion be substituted for fact, it could not afford even a pretext for hostility. It is likewise certain that, after the date assigned to the treaty of Pilnitz, the emperor, who was the reputed head of the confederacy, gave strong proof of the renunciation of its object, if hostile to the revolution, by signifying,

through its ministers, to all the foreign Courts, his determination to support in the Constitution of 1792, accepted by Louis the XVI.

The diplomatic correspondence between France and Austria, which preceded the rupture, evinces that the treaty of Pilnitz was not the cause of this war, for it is not even mentioned. The immediate ostensible cause, as it there appears, was the refusal of Austria to disarm in compliance with the peremptory demand of France; a demand to which this apparently very reasonable reply was given,—that France had previously armed to a greater extent; and that Austria could not safely reduce her force while France remained in so disturbed and inflamed a state as to leave her neighbors every moment exposed to the enterprises of her revolutionary fervor. There is no absolute criterion by which it can be pronounced whether this reply was merely a pretext or the dictate of a serious apprehension. But it is certain that the correspondence discovers great appearance of moderation and caution on the part of the Imperial Cabinet, and it is not to be denied, that the state of effervescence of the French nation at this juncture furnished real causes of alarm to the neighboring governments.

It is true, at last, probable, whether France in declaring war, as she did at the same time against Austria and Prussia, was actuated by the conviction that it was necessary to anticipate and disconcert the unfriendly views of those powers; or whether the war, as has been suggested with great probability, was sought by the republican party as a mean of embarrassing the executive government, and paving the way for the overthrow of the royalty. Two things well established are instructive on this point. The one, that the king was driven against his wish, by a ministry forced upon him by the popular party, to propose the declaration of war, which he considered as the tomb of his family; the other, that Brissot, the head of the then prevailing faction, some time afterwards exultingly boasted that, "but for this war, the revolution of the tenth of August would never have taken place; that, but for this war, France would never have been a republic."

Admitting nevertheless that the true source of the war with Austria and Prussia is enveloped in some obscurity, there is none as to the wars in which France became subsequently engaged. It is clear as to them that she was the original aggressor.

It appeared from cotemporary testimony that one of the first acts of that assembly which dethroned the king, was in a paroxysm of revolutionary frenzy, to declare itself "*A Committee of Insurrection* of the whole human race, for the purpose of overturning all existing government." This extravagant declaration surpasses any thing to be found in the ample record of human madness. It amounted to an act of hostility against mankind. The republic of America no less than the despotism of Turkey was included in the anathema. It breathed that wild and excessive spirit of fanaticism which would scruple no means of establishing its favorite tenets; and which, in its avowed object, threatening the disorganization of all governments, warranted a universal combination to destroy the monstrous system of which it was the soul.

The decrees of the 19th of November and the 15th of December, 1792, were modifications of the same spirit. The first offered fraternity and assistance to every people who should wish to recover their liberty, and charged the executive power to send orders to their generals to give that assistance, and to defend *those citizens* who had been or might be vexed for the cause of liberty.

The last declared that the French nation would *treat as* enemies *any people* who, refusing or *renouncing liberty* and *equality*, were desirous of preserving, recalling, or entering into accommodation with their prince and privileged castes.

The first was a general signal to insurrection and revolt. It was an invitation to the seditious of every country, in pursuit of chimerical schemes of more perfect liberty, to conspire under the patronage of France against the established government, however free. To assist a people in a reasonable and virtuous struggle for liberty, already begun, is both justifiable and laudable; but to incite to revolution every where by indiscriminate offers

of assistance beforehand, is to invade and endanger the foundation of social tranquillity. There is no term of reproach or execration too strong for so flagitious an attempt.

The last of the two decrees is not merely in spirit—it is in terms equivalent to a manifesto of war against every nation having a prince or nobility. It declares explicitly and formally, that the French nation *will treat as enemies every people*, who may desire to preserve or restore a government of that character.

It is impossible not to feel the utmost indignation against so presumptuous and so odious a measure. It was not only to scatter the embers of a general conflagration in Europe; it was to interfere coercively in the interior arrangements of other nations; it was to dictate to them, under the penalty of the vengeance of France, what form of government they should live under; it was to forbid them to pursue their political happiness in their own way; it was to set up the worst of all despotisms, a despotism over opinion, not against one nation, but against almost all nations. With what propriety is the interference of the powers ultimately coalesced against France, in her interior arrangements, imputed to them as an unpardonable crime, when her leaders had given so terrible an example, and had provoked retaliation as a means of self-preservation?*

These decrees preceded the transactions which immediately led to a rupture between France and the other powers, Austria and Prussia excepted.

It is idle to pretend, that they did not furnish to those powers just cause of war. There is no rule of public law better established, or on better grounds, than that when one nation unequivocally avows maxims of conduct dangerous to the security and tranquillity of others, they have a right to attack her and to endeavor to disable her from carrying her schemes into effect.

* If it be true, as pretended, that Austria and Prussia first interfered in this way with France, it was no plea for her to retaliate on all the rest of Europe. Great Britain in particular, as far as appears, had observed a fair neutrality. Yet the principle of the French decree was emphatically pointed against her, by the open reception of deputations of malcontents, and public declarations to them, on behalf of the French government, avowing the desire of seeing all thrones overturned, of a national convention, and a republican revolution in England.

They are not bound to wait till inimical designs are matured for action, when it may be too late to defeat them.

How far it may have been wise in a particular government to have taken up the gauntlet, or if, in its option, to have left France to the fermentations of the pernicious principles by which its leaders were actuated, is a question of mere expediency, distinct from the right. It is also a complicated and difficult question, one which able and upright men might decide different ways. But the right is still indisputable. The moment the convention vomited forth these venomous decrees, all the governments threatened were justifiable in making war upon France.

Neither were they bound to be satisfied with after explanations or qualifications of the principles which had been declared. They had a right to judge conscientiously whether reliance could be placed on any pretended change of system, and to act accordingly. And while the power of France remained in the same men, who had discovered such hostile views, and while the effervescence of the public mind continued at its height, there could not have been, in the nature of things, any security in assurances of greater moderation. Fanaticism is a spirit equally fraudulent and intractable. Fanatics may dissemble the better to effect their aims, but they seldom suddenly reform. No faith is due to the reformation which they may effect, unless it has been the work of time and experience.

But whether a wrong or right election, in point of expediency, may have been made by all or any of the powers which, after the passing of those decrees, became engaged in hostility with France, it is not the less true, that her government was the first aggressor, and is primarily chargeable with the evils which have followed. This conclusion is greatly aided by the striking fact, that it was France which declared war, not only against Austria and Prussia, but against England, Spain, Sardinia, and Holland.

Two very important inferences result from the facts which have been presented; one, that in blowing up the dreadful flame which has overwhelmed Europe in misfortune, France is the party principally culpable; the other, that the prominent original

feature of her revolution is the spirit of proselytism, or the desire of new modelling the political institutions of the rest of the world according to her standard. The course of the revolution also demonstrates that, whatever change of system may have been at any time pretended, or however the system may in particular instances have yielded to a temporary policy, it has continued in the main to govern the conduct of the parties who have successively triumphed and tyrannized.

TITUS MANLIUS.

III.

April 7th, 1798.

In reviewing the disgusting spectacle of the French revolution, it is difficult to avert the eye entirely from those features of it which betray a plan to disorganize the human mind itself, as well as to undermine the venerable pillars that support the edifice of civilized society. The attempt by the rulers of a nation to destroy all religious opinion, and to pervert a whole nation to atheism, is a phenomenon of profligacy reserved to consummate the infamy of the unprincipled reformers of France. The proofs of this terrible design are numerous and convincing.

The animosity to the Christian system is demonstrated by the single fact of the ridiculous and impolitic establishment of the decades, with the evident object of supplanting the Christian Sabbath. The inscriptions by public authority on the tombs of the deceased, affirming death to be an eternal sleep, witness the desire to discredit the belief of the immortality of the soul. The open profession of atheism in the convention,* received with acclamations; the honorable mention on its journals of a book professing to prove the nothingness of all religion;† the institution of a festival to offer public worship to a courtesan decorated

* By Dupont, Danton, &c.

† Written and presented by Anacharsis Clootz, calling himself orator of the human race.

with the pompous title of "Goddess of Reason," the congratulatory reception of impious children appearing in the hall of the convention to lisp blasphemy against the King of kings—are among the dreadful proofs of a conspiracy to establish atheism on the ruins of Christianity—to deprive mankind of its best consolations and most animating hopes, and to make a gloomy desert of the universe.

Latterly, the indications of this plan are not so frequent as they were, but from time to time something still escapes which discovers that it is not renounced. The late address of Buonaparte to the Directory is an example. That unequalled conqueror, from whom it is painful to detract, in whom one would wish to find virtues worthy of his shining talents, profanely unites religion (not superstition) with royalty and the feudal system as the scourges of Europe for centuries past. The decades likewise remain the *catapulta* which are to batter down Christianity.

Equal pains have been taken to deprave the morals as to extinguish the religion of the country, if indeed morality in a community can be separated from religion. It is among the singular and fantastic vagaries of the French revolution, that while the Duke of Brunswick was marching to Paris a new law of divorce was passed, which makes it as easy for a husband to get rid of his wife, and a wife of her husband, as to discard a worn-out habit.* To complete the dissolution of those ties, which are the chief links of domestic and ultimately of social attachment, the journals of the convention record with guilty applause the accusations preferred by children against their parents.

It is not necessary to heighten the picture by sketching the horrid group of proscriptions and murders which have made France a den of pillage and slaughter; blackening with eternal opprobrium the very name of man.

The pious and moral weep over these scenes as a sepulchre destined to entomb all they revere and esteem. The politician

* This law, it was understood, had been lately modified in consequence of its manifestly pernicious tendency: but upon a plan which, according to the opinions of the best men in the two councils lately banished, would leave the evil in full force.

who loves liberty, sees them with regret as a gulf that may swallow up the liberty to which he is devoted. He knows that morality overthrown (and morality *must* fall with religion), the terrors of despotism can alone curb the impetuous passions of man, and confine him within the bounds of social duty.

But let us return to the conduct of revolutionary France towards other nations, as more immediately within our purpose.

It has been seen that she commenced her career as the champion of universal liberty: and, proclaiming destruction to the governments which she was pleased to denominate despotic, made a tender of fraternity of and assistance to the nations whom they oppressed. She at the same time disclaimed conquest and aggrandizement.

But it has since clearly appeared that at the very moment she was making these professions, and while her diplomatic agents were hypocritically amusing foreign courts* with conciliatory explanations and promises of moderation, she was exerting every faculty by force and fraud, to accomplish the very conquest and aggrandizement which she insidiously disavowed. The people of Belgium, ensnared by fair pretences, believed that in abandoning the defence of their country and the cause of their ancient sovereign, they acquired a title to enjoy liberty under a government of their own choice, protected by France. Contrary to the hopes which were inspired—contrary to the known will of a large majority of that people—contrary to all their religious and national prejudices; they have been compelled to become departments of France. And their violated temples have afforded a rich plunder to aliment further conquest and oppression. The Dutch, seduced by the same arts to facilitate rather than obstruct the entrance of a French army into their country, thought they were only getting rid of their stadtholder and nobles, and were to retain their territory and their wealth, secured by such a civil establishment as they should freely choose. Their reward is the dismemberment of their country and the loss of their wealth by exhausting contributions; and they are obliged to take a govern-

* England among the rest.

ment, dictated by a faction openly countenanced and supported by France. Completely a province of France, in imitation of their frantic masters they are advancing with rapid strides to a lawless tyranny at home.* France, professing eternal hatred to kings, was to be the tutelary genius of republics. Holland, Genoa, Venice, the Swiss Canton, and the United States, are agonizing witnesses of her sincerity.

Of undone Holland no more need be said; nothing remains for us but to exercise tender sympathy in the unfortunate fate of a country which generously lent its aid to establish our independence, and to deduce from her melancholy example an instructive lesson to repel with determined vigor the mortal embrace of her seducer and destroyer.

Genoa, a speck on the globe, for having at every hazard resisted the efforts of the enemies of France, to force her from a neutral station, is recompensed with a subversion of her government and the pillage of her wealth, by compulsory and burthensome contributions.

Venice is no more! In vain had she preserved a faithful neutrality, when perhaps her interposition might have inclined the scale of victory in Italy against France. A few of her citizens† kill some French soldiers. Instant retaliation takes place. Every atonement is offered. Nothing will suffice but the overthrow of her government. 'Tis effected. Her own citizens, attracted by the lure of democracy, become accessory to it, and receive a popular government at the hand of France. What is the sequel? what the faith kept with them? It suits France to bribe the emperor to a surrender of the Netherlands and to peace, that she may pursue her projects elsewhere with less obstacle. It suits France to extend her power and commerce by the acquisitions of portions of the Venitian territories. The bribe is offered and accepted. Venice is divided. She disappears from the map of nations. The tragedy of Poland is reacted with circumstances of aggravated atrocity. France is perfidious

* By the last accounts, some of the most independent citizens have been seized and imprisoned merely for the constitutional exercise of their opinion.

† Were they not French agents employed to create the pretext?

enough to sacrifice a people who, at her desire, had consented to abrogate their privileged casts to the chief of those despots, against whom she had vowed eternal hatred.

The Swiss Cantons—the boast of republicans—the model to which they have been glad to appeal in proof that a republican government may consist with the order and happiness of society—the old and faithful allies of France, who are not even pretended to have deviated from sincere neutrality—what are they at this moment? Perhaps like Venice, a *story told!* The despots of France had found pretences to quarrel with them; commotions were excited; the legions of France were in march to second the insurgents. Little other hope remains than that the *death* of this respectable people will be as glorious as their life: that they will sell their independence as dearly as they bought it. But why despair of a brave and virtuous people who appear determined to meet the impending danger with a countenance emulous of their ancient renown?

The United States—what is their situation? Their sovereignty trampled in the dust, and their commerce bleeding at every pore, speak in loud accents the spirit of oppression and rapine which characterizes the usurpers of France. But of this a distinct view is requisite, and will be taken.

In these transactions we discover ambition and fanaticism marching hand in hand—bearing the ensigns of hypocrisy, treachery, and rapine. The dogmas of a false and fatal creed second the weapons of ambition. Like the prophet of Mecca, the tyrants of France press forward with the alcoran of their faith in one hand and the sword in the other. They proselyte, subjugate, and debase—no distinction is made between republic and monarchy—all must alike yield to the aggrandizement of the "*great nation;*" the destinctive, the arrogant appellation lately assumed by France to assert in the face of nations her superiority and ascendency. Nor is it a mere title with which vanity decorates itself;—it is the substantial claim of dominion. France, swelled to a gigantic size, and aping ancient Rome, except in her virtues, plainly meditates the control of mankind, and is actually giving the law to nations. Unless they quickly

rouse and compel her to abdicate her insolent claim, they will verify the truth of that philosophy, which makes man in his natural state a quadruped, and it will only remain for the miserable animal, converting his hands into paws in the attitude of prone submission, to offer his patient and servile back to whatever burthens the *lordly* tyrants of France may think fit to impose.

TITUS MANLIUS.

IV.

April 12, 1798.

In the pursuit of her plan of universal empire, the two objects which now seem to occupy the attention of France, are a new organization of Germany, favorable to her influence, and the demolition of Great Britain. The subversion and plunder—first of Portugal, and next of Spain, will be merely collateral instances in the great drama of iniquity.

In the new distribution of the territories, population, and political power of the Germanic body, which has been announced as in contemplation of the Directory, three characters are conspicuous—a despotism to build up rivals to the imperial chief, strong enough to feel the sentiment of competition, but too weak to hazard it alone, who will therefore stand in need of the patronage of France; and, as a consequence, will facilitate her influence in the affairs of the empire—a generosity in making compensation at the expense of others, for the spoils with which she has aggrandized herself—a facility of transferring communities like herds of cattle from one master to another, without the privilege of an option. In a project like this, it is impossible to overlook the plain indications of a restless, overbearing ambition, combined with a total disregard of the rights and wishes of nations. The people are counted for nothing, their masters every thing.

The conduct of France towards Great Britain, is the copy of

that of Rome towards Carthage. Its manifest aim is to destroy the principal obstacle to a domination over Europe. History proves that Great Britain has repeatedly upheld the balance of power there, in opposition to the grasping ambition of France. She has no doubt occasionally employed the pretence of danger, as the instrument of her own ambition; but it is not the less true that she has been more than once an essential and effectual shield against real danger. This was remarkably the case in the reign of Louis the XIVth, when the security of Europe was seriously threatened by the successful enterprises of that very ambitious monarch.

The course of the last negotiation between France and Britain leaves no doubt that the former was resolved against peace on any practicable terms. This of itself indicates that the destruction of the latter is the direct object in view. But this object is not left to inference. It has been fastidiously proclaimed to the world; and the necessity of crushing the *tyrant* of the *sea*, has been trumpeted as a motive to other powers to acquiesce in the execution of a plan, by which France endeavors to become the *tyrant* both of *sea* and *land*. The understanding of mankind has, at the same time, been mocked with the proposition that the peace of Europe would be secured by the aggrandizement of France on the ruins of her rivals; because then, it is said, having nothing to fear, she would have no motive to attack; as if moderation was to be expected from a government or people having the power to impose its own will without control. The peace of Europe would in such a case be the peace of vassalage.

Towards the execution of the plan of destroying Great Britain, the rights of other nations are daringly and openly invaded. The confiscation is decreed of all vessels with their cargoes, if composed in any part of articles of British fabric; and all nations are to be compelled to shut their ports against the meditated victim. Hamburg is stated to have already reluctantly yielded to this humiliating compulsion.

While the demolition of Great Britain is eagerly pursued as a primary object, that of Portugal seems designed to form an episode in the tragedy. Her fears had induced her to buy a

peace. The money she had paid was the immediate instrument of the revolution of September last. Yet no sooner had the news of pacification with the emperor reached Paris, than pretences were sought to elude the ratification of the purchased treaty. A larger tribute was demanded—more probably than it was expected Portugal would be able to pay, to serve as an excuse for marching an army to revolutionize and plunder.* The blow may perhaps be suspended by further sacrifices, but it is not likely to be finally averted.

Spain, too, was in a fair way of enjoying the fruits of her weakness in putting on the yoke of France, and of furnishing another proof of the general scheme of aggrandizement and oppression. The demand of the cession of Louisiana, long pressed upon her, had at length become categoric. The alternative was to comply or offend. The probability is that before this time the cession has been made; and Spain has learnt to her cost, that the chief privilege of an ally of France is to be plundered at discretion. With the acquisition of Louisiana, the foundation will be laid for stripping her of South America and her mines; and perhaps for dismembering the United States. The magnitude of this mighty mischief is not easily calculated.

Such vast projects and pretensions pursued by such unexampled means, are full evidence of a plan to acquire an absolute ascendant among nations. The difficulties in the final execution of a plan of this kind are, with many decisive reasons, against its existence.

But in the case of ancient Rome, did it not in fact exist, and was it not substantially realized? Does the experience of the past day warrant the opinion that men are not as capable of mad and wicked projects as they were at any former period? Does not the conduct of the French government display a vastness and sublimation of views, an enormity of ambition, and a destitution of principle, which render the supposition of such a design probable? Has not a more rapid progress been made towards its execution than was ever made by Rome in an equal period?

* Such is the account of the transaction received through authentic channels.

In their intercourse with foreign nations, do not the Directory affect an ostentatious imitation of Roman pride and superiority? Is it not natural to conclude that the same spirit points to the same ends? The project is possible. The evidence of its existence is strong, and it will be the wisdom of every other State to act upon the supposition of its reality.

Let it be understood, that the supposition does not imply the intention to reduce all other nations formally to the condition of provinces. This was not done by Rome in the zenith of her greatness. She had her provinces, and she had her allies. But her allies were in fact her vassals. They obeyed her nod. Their princes were deposed and created at pleasure.

Such is the proud pre-eminence to which the ambition of France aspires! After securing as much territory as she thinks it expedient immediately to govern, after wresting from Great Britain and attaching to herself the command of the sea, after despoiling Spain of the riches of Mexico and Peru, after attaining by all these means to a degree of strength sufficient to defy and awe competition, she may be content, under the modest denomination of allies, to rule the rest of the world by her frown or her smile.

The character of the actual Directory of France justifies the imputation to them of any project the most extravagant and criminal. Viewed internally as well as externally, their conduct is alike detestable. They have overturned the Constitution, which they were appointed to administer, with circumstances of barefaced guilt that disgrace a revolution, before so tarnished as seemed scarcely to admit of greater degradation, and have erected in its stead a military despotism, clothed but not disguised with the mere garb of the Constitution which they have abolished. In the accomplishment of this usurpation, they have assassinated one of their colleagues* and seized and banished another, together with all those members of the two councils, who were disposed and able to combat their pernicious aims. They have done more;

* Carnot, as was reported at the time, and as is confirmed by nothing having been since heard of him. He had been too deeply in the secrets of the violent party. It was necessary to silence him.

not content with rendering themselves masters of the two councils, and converting them into the mere pageants of national representation, they have thought it proper to secure their own power by exiling or imprisoning such private citizens as they feared might promote the future election of men hostile to their views, on the futile pretence of a counter revolutionary plot, to be effected by *royalizing* the elections. Thus have they not only monopolized all the power for the present, but they have made provisions for its perpetuation; so long at least as the Prætorian bands will permit.

No impartial man can doubt that the plot charged upon the exiled members is a forgery. The characters of several of the accused belie it. Barthelemy and Pichegru are virtuous men. The former has long merited and possessed this character. The latter has given numerous proofs of a good title to it—his only fault seems to have been that of enthusiasm in the worst of causes. Neither of them, like *Dumourier*, had been, from his entrance on public life, marked out as the votary of an irregular ambition. The alleged object of the plot, as to such men, from the circumstances of the conjuncture, was wholly improbable; nothing like satisfactory proof has come to light. But the decisive argument of their innocence is, that the usurpers did not dare to confront them with a fair legal accusation and trial. It was so clearly their interest and policy to have justified themselves by establishing the guilt of the accused, if in their power, that the omission to attempt it is the demonstration of its impossibility. Having all authority in their own hands, and the army at their devotion, they had nothing to fear from the pursuit; and they must have foreseen that the banishment without trial, would finally marshal public opinion against them. There can be little doubt that the people of France at this moment regard with compassion and regret the banished directors and deputies, and with horror and detestation the authors of their disgrace. But the people of France internally are annihilated; to their liberty and happiness, this last usurpation gave a more fatal blow than any or all of the former. It has more of system in it, and been less sanguinary, is less likely to provoke resistance from despair.

The inference from the transaction is evident. The real crime of the banished was the desire of arresting the mad career of the Directory, and of restoring peace to France, in the hope that peace might tend to settle the government on the foundation of order, security, and tranquillity. The majority of the Directory foresaw that peace would not prove an element congenial with the duration of their power; or perhaps, under the guidance of Sieyes, the conjurer of the scene, they judged it expedient to continue in motion the revolutionary wheel, till matters were better prepared for creating a new *dynasty* and a new *aristocracy** to regenerate the exploded monarchy of France with due regard to their own interest.

Thus we perceive that the interior conduct of the Directory has the same characters with their exterior—the same irregular ambition, the same contempt of principle, the same boldness of design, the same temerity of execution. From such men what is not to be expected? The development of their recent conduct towards the United States will no doubt confirm all the inferences to be drawn from other parts of the portrait, and will contribute to prove, that there is nothing too abandoned or too monstrous for them to meditate or attempt.

Who that loves his country, or respects the dignity of his nature, would not rather perish than subscribe to the prostration of both before such men and such a system? What sacrifice, what danger is too great to be incurred in opposition to both? What security in any compromise with such unprincipled men? What safety, but in union, in vigor, in preparation for every extremity; in a decisive and courageous stand for the rights and honor of our injured and insulted country?

TITUS MANLIUS.

* There is good evidence that this, at bottom the real plan of the Abbé Sieyes and some of the most influential in the executive department, are his creatures.

V.

April 16th, 1798.

To estimate properly the conduct of revolutionary France towards the United States, the circumstances which have reciprocally taken place, must be viewed together. It is a *whole* not a *part* which is to be contemplated. A rapid summary, nevertheless, of the most material is all that can be presented.

Not only the unanimous good wishes of the citizens of this country spontaneously attached themselves to the revolution of France in its first stages, but no sooner was the change from monarchy to a republic officially announced, than our government, consulting the principles of our own revolution, and the wishes of our citizens, hastened to acknowledge the new order of things. This was done to the last minister sent by Louis the XVIth, before the arrival of the first envoy from the republic. Genet afterwards came—his reception by the government was cordial—by the people, enthusiastic.

The government did not merely receive the minister of the republic, in fact, and defer the obligation of treaties till the contest concerning its establishment had been terminated by success: but giving the utmost latitude to the maxim that, real treaties bind nations, notwithstanding revolutions of government, ours did not hesitate to admit the immediate operation of the antecedent treaties between the two countries, though the revolution could not be regarded as yet fully accomplished—though a warrant for a contrary policy might have been found in the conduct of France herself—and though the treaties contained several stipulations which gave to her important preferences relative to war, and which were likely to give umbrage to the powers coalesced against her.

In acknowledging the republic, the United States preceded every other nation. It was not till a long time after, that any of the neutral powers followed the example. Had prudence been exclusively consulted, our government might not have done all that it did at this juncture, when the case was very nearly Europe in arms against France.

But good faith and a regard to consistency of principle, prevailed over the sense of danger. It was resolved to encounter it: qualifying the step by the manifestation of a disposition to observe a sincere neutrality, as far as should consist with the stipulations of treaty. Hence the proclamation of neutrality.

It ought to have no small merit in the eyes of France, that at so critical a period of her affairs, we were willing to run risks so imminent. The fact is, that it had nearly implicated us in the war on her side, at a juncture when all calculations were against her, and when it was certain she could have afforded us no protection or assistance.

What was the return? Genet came with neutrality on his lips, but war in his heart. The instructions published by himself, and his practice upon them, demonstrate that it was the premeditated plan to involve us in the contest; not by a candid appeal to the judgment, friendship, or interest of our country, but by alluring the avarice of bad citizens into acts of predatory hostility, by instituting within our territory, military expeditions against nations with whom we were at peace. And when it was found that our Executive would not connive at this insidious plan, bold attempts were made to create a schism between the people and the government, and, consequently, to sow the seeds of civil discord, insurrection, and revolution. Thus began the republic.

It is true that the Girondist faction, having been subverted by that of Robespierre, our complaint of the agent of the former was attended with success. The spirit of vengeance came in aid of the justice of our demand. The offending minister was recalled with disgrace. But Robespierre did not fail in a public speech to give a gentle hint of delinquency in the United States, sufficiently indicating that the authors and the manner were more in fault, in his opinion, than the thing. It was not the expedient to quarrel with us. There was still a hope that a course of things, or more dexterous management, might embark us in the war, as an auxiliary to France.

The treaties were made by us the criterion of our duty; but as they did not require us to go to war, as France did never even

pretend this to be the case, listening to the suggestions, not only of interest, but of safety, we resolved to endeavor to preserve peace. But we were equally resolved to fulfil our real obligations in every respect. We saw without murmur our property seized in belligerent vessels—we allowed to French ships of war and privateers, all the peculiar exclusive privileges in our ports to which they were entitled by our treaties upon fair construction—*upon a construction fully concurred in by the political leader** of the adherents to France—we went further, and gratuitously suffered her to sell her prizes in our country, in contravention, perhaps, of the true principles of neutrality—we paid to her new government the debt contracted by us with the old, not only as fast as it became due, but by an anticipation, which did not give pleasure to her enemies. While our government was faithful, our citizens were zealous. Not content with good wishes, they adventured their property in the furnishing of supplies to an extent that showed, in many cases, the co-operation of zeal with interest.

Our country, our merchants, and our ships, in the gloomy periods of her revolution, have been the organs of succors to France, to a degree which gives us an undoubted title to the character of very useful friends.

Reverse the medal. France from the beginning, has violated essential points in the treaties between the two countries. The first formal unequivocal act by either of the belligerent parties, interfering with the rule that "*free ships make free goods*," was a decree of the French convention. This violation has been persisted in, and successive violations added, till they amount to a general war on our commerce.

First, the plea of necessity repelled our feeble and modest complaints of infractions. Next, the plea of delinquencies on our part was called in aid of the depredations which it was found convenient to practise upon our trade. Our refusal to accord privileges not granted by our treaties, but claimed by misconstructions destitute even of plausibility, privileges which would

* Mr. Jefferson.

have put us at once in a state of war with the enemies of France—the reciprocal application to them of principles originally established against their remonstrances in favor of France, occasional embarrassments to her privateers, arising from the established forms of our courts, and the necessity of vigilance to frustrate her efforts to entangle us against our will in the war—delays in giving relief in a few instances, rendered unavoidable by the nature of our government, and the great extent of our territory—these were so many topics of bitter accusation against our government, and of insult, as rude as it was unmerited.

Our citizens, in judging whether the accusation was captious or well founded, ought to bear in mind, that most of the transactions on which it was predicated, happened under the administration of Jefferson and Randolph, and, as is well ascertained, with their full assent and co-operation. They will not readily suppose that these very cunning men were the dupes of colleagues actuated by ill-will towards France; but they will discover in this union of opinion, among men of very opposite principles, a strong probability that our government acted with propriety, and that the dissatisfaction of France, if more than a color, was unreasonable.

Hitherto, the progress, no less than the origin of our controversy with France, exhibits plain marks of a disposition on her part to disregard those provisions in the treaties which it was our interest should be observed by her—to exact from us a scrupulous performance of our engagements, and even the extension of them beyond their true import—to embroil us with her enemies, contrary to our inclination and interest, and without even the allegation of a claim upon our faith—to make unreasonable demands upon the grounds of complaints against us, and excuses to violate our property and rights—to divide our nation, and to disturb our government.

Many of the most determined advocates of France among us, appear lately to admit, that previous to the treaty with Great Britain, the complaints of France against the United States were frivolous; those of the United States against France, real and serious.

But the treaty with Great Britain, it is affirmed, has changed the ground. This, it is said, has given just cause of discontent to France—this has brought us to the verge of war with our first ally and best friend; to this fatal instrument are we indebted for the evils we feel, and the still greater which impend over our heads.

These suggestions are without the shadow of foundation. They prove the infatuated devotion to a foreign power of those who invented them, and the easy credulity of those with whom they have obtained currency. The evidence of a previous disposition in France, to complain without a cause, and to injure without provocation, is a sufficient comment upon the resentment she professes against the treaty. The partiality or indulgence with which the ill treatment received from her prior to that event, was viewed by her decided partisans is a proof of the facility with which they credit her pretensions, and palliate her aggressions.

The most significant of the charges against the treaty, as it respects France, are, that it abandons the rule of free ships making free goods; that it extended undùly the list of contraband articles, and gave color to the claim of a right to subject provisions to seizure; that a treaty of amity with the enemy of France, in the midst of a war, was a mark of preference to that enemy, and of ill-will to her.

The replies which have been given to these charges are conclusive.

As to the first point, the stipulation of two powers to observe between themselves a particular rule in their respective wars, a rule, too, innovating upon the general law of nations, can, on no known or reasonable principle of interpretation, be construed to intend that they will insist upon that rule with all other nations, and will make no treaty with any, however beneficial in other respects, which does not comprehend it. To tie up the will of a nation, and its power of providing for its own interests, to so immense an extent, required a stipulation in positive terms. In vain shall we seek in the treaty for such a stipulation or its equivalent. There is not even a single expression to imply it. The idea is, consequently, no less ridiculous than it is novel.

The cotemporary proceedings, legislative and judiciary, of our government, show that it was not so understood in this country. Congress even declined to become a formal party to the armed neutrality of which it was the basis; unwilling to be pledged for the coercive maintenance of a principle which they were only disposed to promote by particular acts. It is equally futile to seek to derive the obligation of the United States to adhere to this rule from the supposition of a change in the law of nations by the force of that league. Neither theory nor practice warrants the attributing so important an effect to a military association, springing up in the war and ending with it; not having had the universal consent of nations, nor a course of long practice to give it a sanction.

Were it necessary to resort to an auxiliary argument, it might be said with conclusive force that France, having before our treaty with Great Britain violated in practice the rule in question, absolved us from all obligations to observe it, if any did previously exist.

As to the second point, it has been repeatedly demonstrated that the enumeration of contraband in the treaty with Great Britain, is agreeable to the *general* law of nations. But this is a matter from its nature liable to vary according to relative situation, and to be variously modified, not only between different nations, but between one nation and different nations. Thus, in our treaty with Great Britain, some articles are enumerated which are omitted in that with France; in that with France, some articles are inserted which are omitted in that with Britain. But it is, perhaps, the first time that a diversity of this sort has been deemed a ground of umbrage to a third party.

With regard to provisions—the treaty only decides that where by the law of nations they are subject to seizure, they are to be paid for. It does not define or admit any new case. As to its giving color to abuse in this respect, this, if true, would amount to nothing. For, till some abuse had actually happened, and been tolerated to the prejudice of France, there was no cause of complaint. The possibility of abuse from a doubtful construction of a treaty between two powers, is no subject of offence to a

third. It is the fact which must govern. According to this indisputable criterion, France has had no cause to complain on this account; for since the ratification of the treaty, no instance of the seizure of provisions has occurred, and it is known that our government protested against such a construction.

Further, the treaty has made no change whatever in the actual antecedent state of things to the disadvantage of France.

Great Britain had, before the treaty, with the sanction of our government, acted upon the principles as to free ships making free goods, and generally, as to the affair of contraband which the treaty recognizes. Nor was that sanction merely tacit, but explicit and direct. It was even diplomatically communicated to the agents of France. If there was any thing wrong, therefore, in this matter, it was chargeable, not upon the treaty, but upon the prior measures of the government, which had left these points mere points of form in the treaty.

The remaining charge against that instrument, involves a species of political metaphysics. Neither the theory of writers nor the history of nations, will bear out the position, that a treaty of amity between a neutral state and one belligerent party, not granting either succors or new privileges relative to war, not derogatory from any obligation of the neutral state to the other belligerent party, is a cause of umbrage to the latter. There can be no reason why a neutral power should not settle differences or adjust a plan of intercourse, beneficial to itself with another power, because this last happens to be at war with a third. All this must be a mere question of courtesy; and might be uncourteous or otherwise according to circumstances, but never a ground of quarrel. If there even might have been want of courtesy in the United States to have entered into a treaty of this sort with the enemy of France; had they volunteered it without cogent motives, there could be none in the particular situation. They were led to the treaty by pre-existing differences, which had nearly ripened to a rupture, and the amicable settlement of which affected very important interests. No favorable conjucture for this settlement was to be lost. The settlement, by the usual formulas in such cases, would amount to a treaty of amity.

Thus it is evident that the treaty, like all the rest, has been a mere pretence for ill treatment. But admitting that this was not the case, that it really afforded some cause of displeasure, was this of a nature to admit of no atonement, or of none short of the humiliation of our country? If the contrary must be conceded, it is certain that our government has done all that was possible towards reconciliation, and enough to have satisfied any reasonable or just government.

France, after the treaty, proceeded to inflict still deeper wounds upon our commerce. She has endeavored to intercept and destroy it with all the ports of her enemies. Nor was this the worst. The spoliation has frequently attended our trade with her own dominions—attended with unparalleled circumstances of rapacity and violence.

The diplomatic representative of the French government to the United States was ordered to deliver to our government a most insulting manifesto, and then to withdraw.

Yet our government, notwithstanding this accumulation of wrongs, after knowing that it had been repeatedly outraged in the person of one minister, condescended to send another specially charged to endeavor to conciliate. This minister was known to unite fidelity to his country with principles friendly to France and her revolution. It was hoped that the latter would make him acceptable, and that he would be able, by amicable explanations and overtures, to obviate misunderstanding and restore harmony. He was not received.

Though it was very problematical whether the honor of the United States, after this, permitted a further advance, yet the government, anxious if possible to preserve peace, concluded to make another and more solemn experiment. A new mission, confided to three extraordinary ministers, took place. They were all three, in different degrees, men well affected to France and her revolution. They were all men of high respectability, and among the purest characters of our country. Their powers and instructions were so ample as to have extorted, from the most determined opposers of the government in the two Houses of Congress, a reluctant approbation in this instance of the President's conduct.

In contempt of the established usage, and of the respect due to us an independent people, with the deliberate design of humbling and mortifying our government, these special and extraordinary ministers have been refused to be received. Admitting all the charges brought against us by France to be well founded, still ministers of that description ought on every principle to have been accredited and conferred with, till it was ascertained that they were not ready to do as much as was expected. Not to pursue this course was to deny us the rank of an independent nation; it was to treat us as Great Britain did while we were yet contending with her for this character.

Instead of this, informal agents, probably panders and mistresses, are appointed to intrigue with our envoys. These, attending only to the earnest wish of their constituents for peace, stoop to the conference. What is the misshapen result?

Money, money, is the burden of the discordant song of these foul birds of prey. Great indignation is at first professed against expressions in the President's speech of May last. The reparation of a disavowal is absolutely due to the honor of the Directory and of the Republic, but it turns out that there is a practicable substitute more valuable. The honor of both, being a marketable commodity, is ready to be commuted for gold.

A douceur of 50,000 pounds sterling for the special benefit of the Directory was to pave the way. Instead of reparation for the spoliations on our commerce exceeding twenty millions of dollars, a loan equal to the amount of them is to be made by us to the French government. Then perhaps a mode might be settled for the liquidation of the claims of our merchants, to be compensated at some future period. The depredations nevertheless were to continue till the treaty should be concluded, which, from the distance between the two countries, must at all events take a great length of time, and might be procrastinated indefinitely at the pleasure of the Directory.

In addition to all this we must purchase of the Directory at par Dutch inscriptions to the amount of thirty millions of florins, and look to the ability of the Batavian republic to redeem them. Already are these assignats depreciated to half their nominal

value, and in all probability will come to nothing, serving merely as a flimsy veil to the extortion of a further and immense contribution.* "Money, a great deal of money," is the cry from the first to the last; and our commissioners are assured that without this they may stay in Paris six months without advancing a step. To enforce the argument they are reminded of the fate of Venice.

At so hideous a compound of corruption and extortion, at demands so exorbitant and degrading, there is not a spark of virtuous indignation in an American breast, which will not kindle into a flame. And yet there are men, could it be believed, vile and degenerate enough to run about the streets to contradict, to palliate, to justify, to preach the expediency of compliance. Such men merit all the detestation of all their fellow-citizens: and there is no doubt that, with time and opportunity, they will merit much more from the offended justice of the laws.

TITUS MANLIUS.

VI.

April 19, 1798.

The inevitable conclusion, from the facts which have been presented, is that revolutionary France has been and continues to be governed by a spirit of proselytism, conquest, domination, and rapine. The detail well justifies the position that we may have to contend at our very doors for our independence and liberty. When the wonders achieved by the arms of France are duly considered, the possibility of the overthrow of Great Britain seems not to be chimerical. If, by any of those extraordinary coincidences of circumstances which occasionally decide the fate of empires, the meditated expedition against England shall succeed; or if, by the immense expense to which that country is driven, and the derangement of her commerce

* Il faut de l'argent—il faut beaucoup de l'argent.

by the powerful means employed to that end, her affairs shall be thrown into such disorder as may enable France to dictate to her the terms of peace; in either of these unfortunate events the probability is, that the United States will have to choose between the surrender of their sovereignty, the new-modelling of their government according to the fancy of the Directory, the emptying of their wealth by contributions into the coffers of the greedy and insatiable monster, and resistance to invasion in order to compel submission to those ruinous conditions.

In opposition to this, it is suggested that the interest of France, concurring with the difficulty of execution, is a safeguard against the enterprise. It is asked, what incentives sufficiently potent can stimulate to so unpromising an attempt? The answer is, the strongest passions of bad hearts—inordinate ambition—the love of domination, that prime characteristic of the despots of France—the spirit of vengeance, for the presumption of having thought and acted for ourselves, a spirit which has marked every step of the revolutionary leaders—the fanatical egotism of obliging the rest of the world to adapt their political system to the French standard of perfection—the desire of securing the future control of our affairs by humbling and ruining the independent supporters of their country, and of elevating the partisans and tools of France—the desire of entangling our commerce with preferences and restrictions which would give to her the monopoly—these passions—the most imperious, these motives, the most enticing to a crooked policy, are sufficient persuasives to undertake the subjugation of this country.

Added to these primary inducements, the desire of finding an outlet for a part of the vast armies, which, on the termination of the European war, are likely to perplex and endanger the men in power, would be an auxiliary motive of great force. The total loss of the troops sent would be no loss to France. Their cupidity would be readily excited to the undertaking, by the prospect of dividing among themselves the fertile lands of this country. Great Britain once silenced, there would be no insuperable obstacle to the transportation. The divisions among

us which have been urged to our commissioners as one motive to a compliance with the unreasonable demands of the Directory, would be equally an encouragement to invasion. It would be believed that a sufficient number would flock to the standard of France, to render it easy to quell the resistance of the rest. Drunk with success, nothing would be thought too arduous to be accomplished.

It is too much a part of our temper to indulge an overweening security. At the close of our revolution war, the phantom of perpetual peace danced before the eyes of every body. We see at this early period with how much difficulty war has been parried, and that with all our efforts to preserve peace, we are now in a state of partial hostility. Untaught by this experience, we now seem inclined to regard the idea of invasion as incredible, and to regulate our conduct by the belief of its improbability. Who would have thought, eighteen months ago, that Great Britain would at this time have been in serious danger of an invasion from France? Is it not now more probable that such a danger may overtake us, than it was then that it would so soon Great Britain?

There are currents in human affairs when events, at other times little less than miraculous, are to be considered as natural and simple. Such were the eras of Macedonian, of Roman, of Gothic, of Saracen inundation. Such is the present era of French fanaticism. Wise men, when they discover symptoms of a similar era, look for prodigies, and prepare for them with foresight and energy.

Admit that in our case invasion is upon the whole improbable; yet, if there are any circumstances which pronounce that the apprehension of it is not absolutely chimerical, it is the part of wisdom to act as if it were likely to happen. What are the inconveniences of preparation compared with the infinite magnitude of the evil if it shall surprise us unprepared? They are lighter than air, weighed against the smallest probability of so disastrous a result.

But what is to be done? Is it not wiser to compound on any terms than to provoke the consequences of resistance?

To do this is dishonor—it is ruin—it is death. Waiving other considerations, there can be no reliance on its efficacy. The example of Portugal teaches us that it is to purchase disgrace, not safety. The cravings of despotic rapacity may be appeased, but they are not to be satisfied. They will quickly renew their force, and call for new sacrifices in proportion to the facility with which the first were made. The situation of France is likely to make plunder for a considerable time to come, an indispensable expedient of government. Excluding the great considerations of public policy, and bringing the matter to the simple test of pecuniary calculation, resistance is to be preferred to submission. The surrender of our whole wealth would only procure respite, not safety. The disbursements for war will chiefly be at home. They will not necessarily carry away our riches, and they will preserve our honor and give us security.

But, in the event supposed, can we oppose with success? There is no event in which we may not look with confidence to a successful resistance. Though Great Britain should be impolitic or wicked enough (which is hoped to be impossible) to compromise her difficulties with France, to divide the United States according to the insulting threat of the agents of France, still it is in our power to maintain our independence and baffle every enemy. The people of the United States, from their number, situation, and resources, are invincible, if they are provident and faithful to themselves.

The question returns, What is to be done? Shall we declare war? No; there are still chances to avoid a rupture, which ought to be taken. Want of success must bring the present despots to reason. Every day may produce a revolution which may substitute better men in their place, and lead to honorable accommodation.

Our true policy is, in the attitude of calm defiance, to meet the aggressions upon us by proportionate resistance, and to prepare vigorously for further resistance. To this end, the chief measures requisite are—to invigorate our treasury by calling into activity the principal untouched resources of revenue—to fortify in earnest our chief seaports—to establish founderies, and increase

our arsenals—to create a respectable naval force, and to raise with the utmost diligence a considerable army. Our merchant vessels ought to be permitted not only to arm themselves but to sink or capture their assailants. Our vessels of war ought to cruise on our coast and serve as convoys to our trade. In doing this, they ought also to be authorized not only to sink or capture assailants, but likewise to capture and bring in privateers found hovering within twenty leagues of our coast. For this last measure, precedent, if requisite, is to be found in the conduct of neutral powers on other occasions.

This course, it will be objected, implies a state of war. Let it be so. But it will be a limited, a mitigated state of war, to grow into a general war or not at the election of France. What may be that election will probably depend on future and incalculable events. The continuation of success on the part of France would insure war. The want of it might facilitate accommodation. There are examples in which states have been for a long time in a state of partial hostility without proceeding to general rupture. The duration of this course of conduct on our part may be restricted to the continuance of the two last decrees of France; that by which the trade of neutrals with the ports of her enemies has been intercepted, and that by which vessels and their cargoes composed in whole or in part of British fabrics, are liable to seizure and condemnation.

The declared suspension of our treaties with France, is a measure of evident justice and necessity. It is the natural consequence of a total violation on one side. It would be preposterous to be fettered by treaties, which are wholly disregarded by the other party. It is essentially our interest to get rid of the guarantee in the treaty of alliance which, on the part of France, is likely to be henceforth nugatory: on the part of the United States, is a substantial and dangerous stipulation, obliging them in good faith to take part with France in any future defensive war in which her West India colonies may be attacked. The consular convention is likewise a mischievous instrument, devised by France in the spirit of extending her influence into other countries, and producing to a certain extent *imperium in imperio*.

It may be happy for the United States that an occasion has been furnished by France in which with good faith they may break through these trammels; re-adjusting when reconciliation shall take place, a basis of connection or intercourse more convenient and more eligible.

The resolution to raise an army, it is to be feared, is that one of the measures suggested which will meet with the greatest obstacle—and yet it is the one which ought to unite opinion. Being merely a precaution for internal security, it can in no sense tend to provoke war; and looking to eventual security in a case which, if it should happen, would threaten our very existence as a nation, it is the most important.

The history of our revolution war is a serious admonition to it. The American cause had nearly been lost for want of creating, in the first instance, a solid force commensurate in duration with the war. Immense additional expense and waste, and a variety of other evils were incurred, which might have been avoided.

Suppose an invasion, and that we are left to depend on militia alone, can it be doubted that a rapid and formidable progress would, in the first instance, be made by the invaders? Who can answer what dismay this might inspire, how far it might go to create general panic, to rally under the banners of the enemy the false and the timid? The imagination cannot, without alarm, anticipate the consequences. Prudence commands that they shall be guarded against. To have a good army on foot will be the best of all precautions to prevent, as well as to repel, invasion.

The propriety of the measure is so palpable that it will argue treachery or incapacity in our councils, if it be not adopted. The friends of the government owe it to their own characters to press it: its opposers can give no better proof that they are not abandoned to a foreign power than to concur in it. The public safety will be more indebted to its advocates than to the advocates of any other measure, in proportion as our independence and liberty are of more consequence than our trade.

It is the fervent wish of *patriotism* that our councils and na-

tion may be united and resolute. The dearest interests call for it. A great public danger commands it. Every good man will rejoice to embrace the adversary of his former opinions, if he will now by candor and energy evince his attachment to his country. Whoever does not do this, consigns himself to irrevocable dishonor. But it is not the triumph over a political rival which the true lover of his country desires—it is the safety and the welfare of that country—and he will gladly share with his bitterest opponent the glory of defending and preserving her. Americans rouse—be unanimous, be virtuous, be firm, exert your courage, trust in Heaven, and nobly defy the enemies both of *God* and *man!*

TITUS MANLIUS.

VII.

April 21, 1798.

The dispatches from our envoys have at length made their appearance. They present a picture of the French government exceeding in turpitude whatever was anticipated from the previous intimations of their contents. It was natural to expect that the perusal of them would have inspired a universal sentiment of indignation and disgust: and that no man calling himself an American, would have had the hardihood to defend or even to palliate a conduct so atrocious. But it is already apparent that an expectation of this kind would not have been well founded.

There are strong symptoms that men in power in France understand better than ourselves the true character of their faction in this country, at least of its leaders: and that as to these, the agents who conferred with our envoys were not mistaken in predicting that the unreasonableness of the demands upon us, would not serve to detach the party from France, or to reunite them to their own country. The high-priest of this sect, with a tender regard for the honor of the immaculate Directory, has already imagined several ingenious distinctions to rescue them from the odium and corruption unfolded by the dispatches. Among these

is the suggestion that there is no proof of the privity of the Directory—all may have been the mere contrivance of the minister for foreign relations.

The presumption from so miserable a subterfuge is, that had the propositions proceeded immediately from the Directory, the cry from the same quarter would have been—there is no evidence the council or nation approved of them; they, at least, are not implicated; the friendship of the two republics ought not to be disturbed on account of the villany of the transitory and fugitive organs of one of them. The inventor of the subterfuge, however, well knew that the executive organ of a nation never comes forward in person to negotiate with foreign ministers; and that unless it be presumed to direct and adopt what is done by its agents, it may always be sheltered from responsibility or blame. The recourse to so pitiful an evasion, betrays in its author a systematic design to excuse France at all events—to soften a spirit of submission to every violence she may commit—and to prepare the way for implicit subjection to her will. To be the proconsul of a despotic Directory over the United States, degraded to the condition of a province, can alone be the criminal, the ignoble aim of so seditious, so prostitute a character.

The subaltern mercenaries go still farther. Publications have appeared, endeavoring to justify or extenuate the demands upon our envoys, and to inculcate the slavish doctrine of compliance. The United States, it is said, are the aggressors, and ought to make atonement. France assisted them in their revolution with loans, and they ought to reciprocate the benefit: peace is a boon worth the price required for it, and it ought to be paid. In this motley form our country is urged to sink voluntarily and without a struggle, to a state of tributary vassalage. Americans are found audacious and mean enough to join in the chorus of a foreign nation, which calls upon us to barter our independence for a respite from the lash.

The charge of aggression upon the United States is false; and if true, the reparation, from the nature of the case, ought not to be pecuniary. This species of indemnification between nations, is only proper where there has been pecuniary injury.

The loans received by us from France were asked as a favor, on condition of reimbursement by the United States; and were freely granted for a purpose of mutual advantage. The advances to be made by us were exacted as the price of peace. Though in name loans, they would be in fact contributions, by the coercion of a power which has already wrested from our citizens an immense property, for which it owes to them compensation.

To pay such a price for peace, is to prefer peace to independence. The nation which becomes tributary takes a master.* Peace is doubtless precious, but it is a bauble compared with national independence, which includes national liberty. The evils of war to resist such a precedent, are insignificant, compared with the evils of the precedent. Besides that, there could be no possible security for the enjoyment of the object for which the disgraceful sacrifice was made. To disguise the poison, misrepresentation is combined with sophistry. It is alleged that finally no more was asked than that the United States should purchase sixteen millions of Dutch inscriptions, and that by doing this, they would have secured compensation to their citizens for depredations on their trade to four times the amount, with an intermission of the depredations: that no hazard of ultimate loss could have attended the operation, because the United States owed the Dutch a much larger sum, which would be a pledge for payment or discount.

This is a palpable attempt to deceive. The first propositions were such as have been represented in a former paper; but it appears in the sequel that the French agents, seeing the inflexible opposition of our envoys to their plan, and hoping to extort finally a considerable sum, though less than at first contemplated, relaxed so far in their demands, as to narrow them down

* The argument of what has been done in the cases of Algerines and Indians, has nothing pertinent but in the comparison of relative ferocity. In this view the claim of the Directory is indisputable; but in every other it is preposterous. It is the general practice of civilized nations to pay barbarians; there is no point of honor to the contrary. But between civilized nations, the payment of tribute by one to another, is, by the common opinion of mankind, a badge of servitude.

to the payment of a douceur of twelve hundred thousand livres, with a positive engagement to advance to the French government a sum equal to the amount of the spoliations of our trade, and a further engagement to send to our government for power to purchase of France thirty-two millions of the inscriptions (12,800,000 dollars); in return for all which, our envoys were to be permitted to remain six months in Paris, depredations on our trade during that time were to be suspended, and a commission of five persons was to be appointed to liquidate the claims for past depredations which were to be satisfied "in a *time* and *manner* to be agreed upon." The substance of these demands is to pay absolutely twenty millions of dollars more than the estimated amount of the spoliations; for what? Barely for the acknowledg ment of a debt due to our citizens, which, without it, is not the less due, and for the suspension of *hostilities** for six months.

Afterwards, in a conversation between the French minister himself and one of our envoys, the propositions assumed another form. The United States were required to purchase of France at par sixteen millions of inscriptions, *and to promise further aid when in their power.* This arrangement being first made, and not before, France was to take measures for reimbursing the equitable demands of our citizens on account of captures.

The purchase of the inscriptions was to be a preliminary. The arrangement for reimbursing our merchants was to follow. The nature of it was not explained; but it is to be inferred from all that preceded, that the expedient of the advance of an equal sum by the United States would have been pressed as the basis of the promised arrangement. This last proposal was in its principle as bad as either of the former; its tendency worse. The promise of future assistance would have carried with it the privilege to repeat at pleasure the demand of money, and to dispute with us about our ability to supply; and it would have embarked us as an *associate* with France in the war. It was to promise her the most effectual aid in our power, and that of which she stood most in need.

* It is observable that the French give themselves the denomination of *hostilities* to their depredations upon us. Our Jacobins would have us consider them as gentle caresses.

The scheme of concealment was a trick. The interest of France to engage us in the war against Great Britain, as a mean of wounding her commerce, is too strong to have permitted the secret to be kept by her. By the ratification of the treaty, in which the Senate must have concurred, too many would have obtained possession of the secret to allow it to remain one. While it did, the apprehension of discovery would have enabled France to use it as an engine of unlimited extortion. But a still greater objection is, that it would have been infamous in the United States, thus covertly to relinquish their neutrality, and with equal cowardice and hypocricy to wear the mask of it, when they had renounced the reality.

The idea of securing our advances, by means of the debt which we owe to the Dutch, is without foundation. The creditors of the United States are the *private citizens* of the Batavian republic. Their demands could not be opposed by a claim of our government upon their government. The only shape in which it could be attempted, must be in that of reprisals for the delinquency of the government. But this would not only be a gross violation of the principle, it would be contrary to *express* stipulations in the contracts for the loans.*

In the same spirit of deception it has also been alleged that our envoys, by giving the douceur of twelve hundred thousand livres, and agreeing to send for powers to make a loan, might have obtained a suspension of depredations for six months There is not a syllable in the dispatches to countenance this assertion. A large advance in addition, either on the basis of the spoliations, or by way of purchase of the inscriptions, is uniformly made the condition of suspending hostilities.

Glosses so false and insidious as these, in a crisis of such imminent public danger, to mislead the opinion of our nation concerning the conduct and views of a foreign enemy, are shoots from a pernicious trunk.

Opportunity alone is wanting to unveil the treason which lurks at the core.

What signifies the quantum of the contribution had it been

* They all provide against seizure or sequestration by way of reprisals. &c.

really as unimportant as it is represented? 'Tis the principle which is to be resisted at every hazard. 'Tis the pretention to make us tributary, in opposition to which every American ought to resign the last drop of his blood.

The pratings of the Gallic faction at this time remind us of those of the British faction at the commencement of our revolution.

The insignificance of a duty of three pence per pound on tea was echoed and re-echoed as the bait to an admission of the right to bind us in all cases whatsoever.

The tools of France incessantly clamor against the treaty with Britain as the just cause of the resentment of France. It is curious to remark, that in the conferences with our envoys this treaty was never once mentioned by the French agents. Particular passages in the speech of the President are alone specified as a ground of dissatisfaction. This is at once a specimen of the fruitful versatility with which causes of complaint are contrived, and of the very slight foundations on which they are adopted. A temperate expression of sensibility at an outrageous indignity, offered to our government by a member of the Directory, is converted into a mortal offence. The tyrants will not endure a murmur at the blows they inflict. But the dispatches of our envoys, while they do not sanction the charge preferred by the Gallic faction against the treaty, confirm a very serious charge which the friends of the government bring against that faction. They prove by the unreserved confession of her agents, that France places absolute dependence on this party in every event, and counts upon their devotion to her as an encouragement to the hard conditions which they attempt to impose. The people of this country must be infatuated indeed, if after this plain confession they are at a loss for the true source of the evils they suffered, or may hereafter suffer from the despots of France. 'Tis the unnatural league of a portion of our citizens with the oppressors of their country.

TITUS MANLIUS.

A FRENCH FACTION.

1798.

There is a set of men whose mouths are always full of the phrases, British faction—British agents—British influence. Feeling that they themselves are interested in a foreign faction, they imagine that it must be so with every one else—and that whoever will not join with them in sacrificing the interests of their country to another country, must be engaged in an opposite foreign faction—*Frenchmen* in all their feelings and wishes, they can see in their opponents nothing but *Englishmen*. Every true *American*—every really independent man, becomes in their eyes, a British agent—a British emissary.

The truth is, that there is in this country a decided *French faction*, but no other foreign faction. I speak as to those who have a share in the public councils, or in the political influence of the country—those who adhered to Great Britain during the revolution may be presumed, generally, to have still a partiality for her. But the number of those who have at this time any agency in public affairs, is very insignificant. They are neither numerous nor weighty enough to form in the public councils a distinct faction. Nor is it to this description of men that the passage is applied.

The satellites of France have the audacity to bestow it upon men who have risked more in opposition to Great Britain, than but few of them ever did—to men who have given every possible proof of their exclusive devotion to the interests of their own country. Let facts speak. The leaders of the French faction during the war managed to place the minister of the country abroad in a servile dependence on the ministry of France, and but for the virtuous independence of those men, which led them to break their instructions, it is very problematical we should have had as early, or as good a peace as that we obtained. The same men, during the same period, effected the revocation of a commission which had been given for making a commercial

treaty with Great Britain, and again, on the approach of peace, defeated an attempt to produce a renewal of that commission, and thus lost an opportunity known to have been favorable for establishing a beneficial treaty of commerce with that country—though they have since made the obtaining of such a treaty, a pretext for reiterated attempts to renew hostilities with her. The same men have been constantly laboring, from the first institution of the present government, to render it subservient, not to the advancement of our own manufactures, but to the advancement of the navigation and manufactures of France.

In a proposal which aims at fostering our own navigation and elevating our own manufactures, by giving them advantages over those *of all foreign nations*, a thousand obstacles occur—a thousand alarms are sounded—usurpation of ungranted powers—designs to promote the interests of particular parts of the Union at the expense of other parts of it, and innumerable other spectres are conjured up to terrify us from the pursuit. Is the project to confer particular favors upon the navigation and manufactures of France, even at the expense of the United States—then all difficulties vanish. This is the true and only object of the Constitution—for this it was framed—by this alone it can live and have a being. To this precious end, we are assured, the States who may particularly suffer, will be willing to sacrifice. In this holy cause we are to risk every thing—our trade, our navigation—our manufactures—our agriculture—our revenues—our peace. Not to consent is to want spirit—to want honor—to want patriotism. Thus does Gallicism assume the honorable part of patriotism.

THE WAR IN EUROPE.

1799.

Every step of the progress of the present war in Europe has been marked with horrors. If the perpetration of them was confined to those who are the acknowledged instruments of des-

potic power, it would excite less surprise—but when they are acted upon by those who profess themselves to be the champions of the rights of man, they naturally occasion both wonder and regret. Passing by the extreme severities which the French have exercised in Italy, what shall we think of the following declarations of Jourdan to the inhabitants of Germany.

* * * * * *

Good God! is it then a crime for men to defend their own government and country? Is it a punishable offence in the Germans that they will not accept from the French what they offer as liberty at the point of the bayonet? This is to confound all ideas of morality and humanity—it is to trample upon all the rights of man and nations—it is to restore the ages of barbarism, according to the laws and practice of modern war; the peasantry of a country, if they remain peaceably at home, are protected from other harm than a contribution to the necessities of the invading army. Those who join the armies of their country and fight with them, are considered and treated as *other soldiers.* But the present French doctrine is, that they are to be treated as *rebels* and *criminals.*

German *patriotism* is a heinous offence in the eyes of French PATRIOTS. How are we to solve this otherwise than by observing that the French are influenced by the same spirit of domination which governed the ancient Romans. They considered themselves as having a right to be the masters of the world, and to treat the rest of mankind as their vassals. How clearly is it proved by this that the praise of a world is justly due to Christianity;—war, by the influence of the humane principles of that religion, had been stripped of half its horrors. The *French* renounce Christianity, and they relapse into barbarism—war resumes the same hideous and savage form which it wore in the ages of Gothic and Roman violence.

ALLEGORICAL DEVICE.

1799.

A globe, with Europe and part of Africa on one side, America on the other, the Atlantic between. The portion occupied by America to be larger than that occupied by Europe. A Colossus to be placed on this globe, with one foot on Europe, the other extending partly over the Atlantic towards America, having on his head a quintuple crown, in his right hand an iron sceptre, projecting but broken in the middle; in his left hand a *pileus* (cap of liberty) reversed—the staff entwined by a snake with its head downward, having the staff of the *pileus* in its mouth, and folding in its tail (as if in the act of strangling) a label with the words "Rights of Man." Upon a base supported by fifteen columns erected on the continent of America, the genius of America to be placed, represented by the figure of *Pallas*—a female in armor, with a firm, composed countenance, a golden breast-plate, a spear in her right hand, and an ægis or shield in her left, having upon it the scales of justice (instead of the Medusa's head); her helmet encircled with wreaths of olive, her spear striking upon the sceptre of the Colossus and breaking it asunder; over her head a radiated crown of glory. It would improve the allegory to represent the Atlantic in a tempest, as indicative of rage, and Neptune in the position of aiming a blow at the Colossus with his trident.

Explanation.—It is known that the globe is an ancient symbol of universal dominion. This, with the Colossus, alluding to the French Directory, will denote the project of acquiring such dominion—the position of the Colossus signifying the intent to extend it to America. The Colossus will represent the American States; and *Pallas*, as the genius of America, will intimate that though loving peace as a primary object (of which the olive-wreath is the symbol), yet, guided by *wisdom* and justice, America successfully exerts her valor to break the sceptre of the tyrant.

MEASURES OF DEFENCE.

1799.

Further measures advisable to be taken without delay.

I. to authorize the President to proceed forthwith to raise the 10,000 men already ordered.

II. To establish an academy for military and naval instruction. This is a very important measure and ought to be permanent.

III. To provide for the immediate raising of a corps of non-commissioned officers, viz., sergeants and corporals, sufficient with the present establishment for an army of 50,000 men. The having these men prepared and disciplined, will accelerate extremely the disciplining of an additional force.

IV. To provide before Congress rise, that in case it shall appear that an invasion of this country by a large army is actually on foot, there shall be a draft from the militia to be classed, of a number sufficient to complete the army of 30,000 men. Provision for volunteers in lieu of drafts. A bounty to be given.

V. To authorize the President to provide a further naval force of six ships of the line, and twelve frigates, with twenty small vessels not exceeding sixteen guns. It is possible the ships of the line and frigates may be purchased of Great Britain to be paid for in stock. We ought to be ready to cut up all the small privateers and gun-boats in the West Indies, so as at the same time to distress the French Islands as much as possible and protect our trade.

VI. Is not the Independence of the French Colonies under the guarantee of the United States to be aimed at? If it is, there cannot be too much promptness in opening negotiations for the purpose. Victor Hughes is probably an excellent subject. This idea however deserves mature consideration.

VII. It is essential the Executive should have half a million of secret service money. If the measure cannot be carried

without it, the expenditure may be with the approbation of three members of each House of Congress. But it were better without this incumbrance.

VIII. Revenue in addition to the $2,000,000 of land tax say:—

Probable produce 500,000.		A stamp duty on hats, as well manufactured at home as imported, distributed into three classes—10, 15, 25 cents.
100,000.		Saddle horses one dollar each, excluding those engaged in agriculture.
		Salt so as to raise the present duty to 25 cents per bushel.
500,000.	In lieu of tax on slaves, which is liable to much objection.	Male servants of the capacities by whatever name:—Maître d'hôtel, house steward, valet de chambre, butler, under-butler, confectioner, cook, house porter, waiter, footman, coachman, groom, postillions, stable boy—for one such servant $1; for two such servants, and not more, $2 each; for three such servants, $3 each; above three, $4 each; one dollar additional by bachelors.
100,000.		New modification with greater diversity of licenses for sale of wines.
100,000.		One per cent. on all successions by descent or devise.

IX. A loan of $10,000,000. The interest to be such as will insure the loan at par. 'Tis better to give high interest, redeemable at pleasure, than low interest with accumulation of capital, as in England.

THE PUBLIC CONDUCT AND CHARACTER OF JOHN ADAMS, ESQ., PRESIDENT OF THE UNITED STATES.

1800.

SIR:

Some of the warm personal friends of Mr. Adams are taking unwearied pains to disparage the motives of those federalists who advocate the equal support of General Pinckney, at the ap-

proaching election of President and Vice-President. They are exhibited under a variety of aspects equally derogatory. Sometimes they are versatile, factious spirits, who cannot be long satisfied with any chief, however meritorious; sometimes they are ambitious spirits, who can be contented with no man that will not submit to be governed by them; sometimes they are intriguing partisans of Great Britain, who, devoted to the advancement of her views, are incensed against Mr. Adams for the independent impartiality of his conduct.

In addition to a full share of the obloquy vented against this description of persons collectively, peculiar accusations have been devised, to swell the catalogue of my demerits. Among these, the resentment of disappointed ambition, forms a prominent feature. It is pretended, that had the President, upon the demise of General Washington, appointed me Commander-in-Chief, he would have been, in my estimation, all that is wise, and good, and great.

It is necessary, for the public cause, to repel these slanders, by stating the real views of the persons who are calumniated, and the reasons of their conduct.

In executing this task, with particular reference to myself, I ought to premise, that the ground upon which I stand, is different from that of most of those who are confounded with me in pursuit of the same plan. While our object is common, our motives are variously dissimilar. A part, well affected to Mr. Adams, have no other wish than to take a double chance against Mr. Jefferson. Another part, feeling a diminution of confidence in him, still hope that the general tenor of his conduct will be essentially right. Few go as far in their objections as I do. Not denying to Mr. Adams patriotism and integrity, and even talents of a certain kind, I should be deficient in candor, were I to conceal the conviction, that he does not possess the talents adapted to the *administration* of government, and that there are great and intrinsic defects in his character, which unfit him for the office of chief magistrate.

To give a correct idea of the circumstances which have gradually produced this conviction, it may be useful to retrospect to an early period.

I was one of that numerous class who had conceived a high veneration for Mr. Adams, on account of the part he acted in the first stages of our revolution. My imagination had exalted him to a high eminence, as a man of patriotic, bold, profound, and comprehensive mind. But in the progress of the war, opinions were ascribed to him, which brought into question with me, the solidity of his understanding.

He was represented to be of the number of those who favored the enlistment of our troops annually, or for short periods, rather than for the term of the war; a blind and infatuated policy, directly contrary to the urgent recommendation of General Washington, and which had nearly proved the ruin of our cause. He was also said to have advocated the project of appointing yearly a new commander of the army; a project which, in any service, is likely to be attended with more evils than benefits; but which in ours, at the period in question, was chimerical, from the want of persons qualified to succeed, and pernicious, from the peculiar fitness of the officer first appointed, to strengthen, by personal influence, the too feeble cords which bound to the service an ill-paid, ill-clothed, and undisciplined soldiery.

It is impossible for me to assert, at this distant day, that these suggestions were brought home to Mr. Adams in such a manner as to ascertain their genuineness; but I distinctly remember their existence, and my conclusion from them; which was, that, if true, they proved this gentleman to be infected with some visionary notions, and that he was far less able in the practice, than in the theory, of politics. I remember, also, that they had the effect of inducing me to qualify the admiration which I had once entertained for him, and to reserve for opportunities of future scrutiny, a definitive opinion of the true standard of his character.

In this disposition I was, when, just before the close of the war, I became a member of Congress.

The situation in which I found myself there, was far from being inauspicious to a favorable estimate of Mr. Adams.

Upon my first going into Congress, I discovered symptoms of a party already formed, too well disposed to subject the interests of the United States to the management of France. Though

I felt, in common with those who had participated in our revolution, a lively sentiment of good will towards a power, whose co-operation, however it was and ought to have been dictated by its own interest, had been extremely useful to us, and had been afforded in a liberal and handsome manner; yet, tenacious of the real independence of our country, and dreading the preponderance of foreign influence, as the natural disease of popular government, I was struck with disgust at the appearance, in the very cradle of our republic, of a party actuated by an undue complaisance to a foreign power; and I resolved at once to resist this bias in our affairs: a resolution, which has been the chief cause of the persecution I have endured in the subsequent stages of my political life.

Among the fruits of the bias I have mentioned, were the celebrated instructions to our commissioners, for treating of peace with Great Britain; which, not only as to final measures, but also as to preliminary and intermediate negotiations, placed them in a state of dependence on the French ministry, humiliating to themselves, and unsafe for the interests of the country. This was the more exceptionable, as there was cause to suspect, that in regard to the two cardinal points of the fisheries and the navigation of the Mississippi, the policy of the cabinet of Versailles did not accord with the wishes of the United States.

The commissioners, of whom Mr. Adams was one, had the fortitude to break through the fetters which were laid upon them by those instructions; and there is reason to believe, that by doing it, they both accelerated the peace with Great Britain, and improved the terms, while they preserved our faith with France.

Yet a serious attempt was made to obtain from Congress a formal censure of their conduct. The attempt failed, and instead of censure, the praise was bestowed which was justly due to the accomplishment of a treaty advantageous to this country, beyond the most sanguine expectation. In this result, my efforts were heartily united.

The principal merit of the negotiation with Great Britain, in some quarters, has been bestowed upon Mr. Adams; but it is certainly the right of Mr. Jay, who took a lead in the several steps

of the transaction, no less honorable to his talents than to his firmness. The merit, nevertheless, of a full and decisive co-operation, is justly due to Mr. Adams.

It will readily be seen, that such a course of things was calculated to impress me with a disposition friendly to Mr. Adams. I certainly felt it, and gave him much of my consideration and esteem.

But this did not hinder me from making careful observations upon his several communications, and endeavoring to derive from them an accurate idea of his talents and character. This scrutiny enhanced my esteem in the main for his moral qualifications, but lessened my respect for his intellectual endowments. I then adopted an opinion, which all my subsequent experience has confirmed, that he is a man of an imagination sublimated and eccentric; propitious neither to the regular display of sound judgment, nor to steady preseverance in a systematic plan of conduct; and I began to perceive what has been since too manifest, that to this defect are added the unfortunate foibles of a vanity without bounds, and a jealousy capable of discoloring every object.

Strong evidence of some traits of this character, is to be found in a journal of Mr. Adams, which was sent by the then Secretary of Foreign Affairs to Congress. The reading of this journal extremely embarrassed his friends, especially the delegates of Massachusetts; who, more than once, interrupted it, and at last, succeeded in putting a stop to it, on the suggestion that it bore the marks of a private and confidential paper, which, by some mistake, had gotten into its present situation, and never could have been designed as a public document for the inspection of Congress. The good humor of that body yielded to the suggestion.

The particulars of this journal cannot be expected to have remained in my memory—but I recollect one which may serve as a sample. Being among the guests invited to dine with the Count de Vergennes, Minister for Foreign Affairs, Mr. Adams thought fit to give a specimen of American politeness, by conducting Madame de Vergennes to dinner; on the way, she was pleas-

ed to make retribution in the current coin of French politeness—by saying to him. "*Monsieur Adams, vous êtes le* Washington *de négociation.*"* Stating the incident, he makes this comment upon it: "These people have a very pretty knack of paying compliments." He might have added, they have also a very dexterous knack of disguising a sarcasm.

The opinion, however, which I have avowed, did not prevent my entering cordially into the plan of supporting Mr. Adams for the office of Vice-President, under the new Constitution. I still thought that he had high claims upon the public gratitude, and possessed a substantial worth of character, which might atone for some great defects. In addition to this, it was well known, that he was a favorite of New England, and it was obvious that his union with General Washington would tend to give the government, in its outset, all the strength which it could derive from the character of the two principal magistrates.

But it was deemed an essential point of caution to take care, that accident or an intrigue of the opposers of the government, should not raise Mr. Adams, instead of General Washington, to the first place. This, every friend of the government would have considered as a disastrous event: as well because it would have displayed a capricious operation of the system in elevating to the first station, a man intended for the second; as because it was conceived that the incomparably superior weight and transcendent popularity of General Washington, rendered his presence at the head of the government, in its first organization, a matter of primary and indispensable importance. It was therefore agreed that a few votes should be diverted from Mr. Adams to other persons, so as to insure to General Washington a plurality.

Great was my astonishment, and equally great my regret, when, afterwards, I learned from persons of unquestionable veracity, that Mr. Adams had complained of unfair treatment, in not having been permitted to take an equal chance with General Washington, by leaving the votes to an uninfluenced current.

The extreme egotism of the temper, which could blind a man

* Mr. Adams, you are the Washington of negotiation.

to considerations so obvious as those that had recommended the course pursued, cannot be enforced by my comment. It exceeded all that I had imagined, and showed, in too strong a light, that the vanity which I have ascribed to him, existed to a degree that rendered it more than a harmless foible.

Mr. Adams was elected Vice-President. His public conduct, in that station, was satisfactory to the friends of the government, though they were now and then alarmed by appearances of some eccentric tendencies.

It is, in particular, a tribute due from me to acknowledge, that Mr. Adams being, in quality of Vice-President, *ex officio* one of the trustees of the sinking fund, I experienced from him the most complete support; which was the more gratifying to me, as I had to struggle against the systematic opposition of Mr. Jefferson, seconded occasionally by Mr. Randolph. Though it would be an ill compliment to Mr. Adams, not to presume that the support which he gave me, was the dictate of his sense of the public interest; yet, so cordial and useful a co-operation, at a moment when I was assailed with all the weapons of party rancor, won from me an unfeigned return of the most amicable sentiments.

I lost no opportunity of combating the prejudices industriously propagated against him by his political enemies; and, for a considerable time, went quite as far as candor would permit, to extenuate the failings which more and more alarmed and dissatisfied his friends.

The epoch at length arrived, when the retreat of General Washington made it necessary to fix upon a successor. By this time, men of principal influence in the federal party, whose situation had led them to an intimate acquaintance with Mr. Adams's character, began to entertain serious doubts about his fitness for the station; yet, his pretensions, in several respects, were so strong, that after mature reflection, they thought it better to indulge their hopes than to listen to their fears. To this conclusion, the desire of preserving harmony in the federal party, was a weighty inducement. Accordingly it was determined to support Mr. Adams for the Chief Magistracy.

It was evidently of much consequence to endeavor to have an eminent federalist Vice-President. Mr. Thomas Pinckney, of South Carolina, was selected for this purpose. This gentleman, too little known in the North, had been all his lifetime distinguished in the South, for the mildness and amiableness of his manners, the rectitude and purity of his morals, and the soundness and correctness of his understanding, accompanied by an habitual discretion and self-command, which has often occasioned a parallel to be drawn between him and the venerated Washington. In addition to these recommendations, he had been, during a critical period, our minister at the court of London, and recently envoy extraordinary to the court of Spain; and in both these trusts, he had acquitted himself to the satisfaction of all parties. With the court of Spain he had effected a treaty, which removed all the thorny subjects of contention, that had so long threatened the peace of the two countries, and stipulated for the United States, on their Southern frontier, and on the Mississippi, advantages of real magnitude and importance.

Well-informed men knew that the event of the election was extremely problematical; and while the friends of Mr. Jefferson predicted his success with sanguine confidence, his opposers feared that he might have at least an equal chance with any federal candidate.

To exclude him, was deemed, by the federalists, a primary object. Those of them who possessed the best means of judging, were of opinion that it was far less important, whether Mr. Adams or Mr. Pinckney was the successful candidate, than that Mr. Jefferson should not be the person; and on this principle, it was understood among them, that the two first-mentioned gentlemen should be equally supported; leaving to casual accessions of votes in favor of the one or the other, to turn the scale between them.

In this plan I united with good faith; in the resolution, to which I scrupulously adhered, of giving to each candidate an equal support. This was done, wherever my influence extended; as was more particularly manifested in the State of New-York, where all the electors were my warm personal or political

friends, and all gave a concurrent vote for the two federal candidates.

It is true that a faithful execution of this plan would have given Mr. Pinckney a somewhat better chance than Mr. Adams; nor shall it be concealed, that an issue favorable to the former would not have been disagreeable to me; as indeed I declared at the time, in the circles of my confidential friends.* My position was, that if chance should decide in favor of Mr. Pinckney, it probably would not be a misfortune; since he, to every essential qualification for the office, added a temper far more discreet and conciliatory than that of Mr. Adams.

This disposition, on my part, at that juncture, proves, at least, that my disapprobation of Mr. Adams has not originated in the disappointment, to which it has been uncandidly attributed. No private motive could then have entered into it. Not the least collision or misunderstanding had ever happened between that gentleman and myself—on the contrary, as I have already stated, I had reason individually to be pleased with him.

No: The considerations which had reconciled me to the success of Mr. Pinckney, were of a nature exclusively public. They resulted from the disgusting egotism, the distempered jealousy, and the ungovernable indiscretion of Mr. Adams's temper, joined to some doubts of the correctness of his maxims of administration. Though in matters of finance he had acted with the federal party; yet he had, more than once, broached theories at variance with his practice. And in conversation, he repeatedly made excursions in the field of foreign politics, which alarmed the friends of the prevailing system.

The plan of giving equal support to the two federal candidates, was not pursued. Personal attachment for Mr. Adams, especially in the New England States, caused a number of the votes to be withheld from Mr. Pinckney, and thrown away. The result was, that Mr. Adams was elected President by a majority of two votes, and Mr. Jefferson Vice-President.

This issue demonstrated the wisdom of the plan which had

* I appeal particularly to Lt. Governor Van Rensselaer and R. Troup, Esq.

been abandoned, and how greatly, in departing from it, the cause had been sacrificed to the man. But for a sort of miracle, the departure would have made Mr. Jefferson President. In each of the States of Pennsylvania, Virginia, and North-Carolina, Mr. Adams had one vote. In the two latter States, the one vote was as much against the stream of popular prejudice, as it was against the opinions of the other electors. The firmness of the individuals who separated from their colleagues, was so extraordinary, as to have been contrary to all probable calculation. Had only one of them thrown his vote into the other scale, there would have been an equality, and no election. Had two done it, the choice would have fallen upon Mr. Jefferson.

No one, sincere in the opinion that this gentleman was an ineligible and dangerous candidate, can hesitate in pronouncing, that in dropping Mr. Pinckney, too much was put at hazard; and that those who promoted the other course, acted with prudence and propriety.

It is a fact, which ought not to be forgotten, that Mr. Adams, who had evinced discontent, because he had not been permitted to take an equal chance with General Washington, was enraged with all those who had thought that Mr. Pinckney ought to have had an equal chance with him. But in this there is perfect consistency. The same turn of temper is the solution of the displeasure in both cases.

It is to this circumstance of the equal support of Mr. Pinckney, that we are in a great measure to refer the serious schism which has since grown up in the federal party.

Mr. Adams never could forgive the men who had been engaged in the plan; though it embraced some of his most partial admirers. He has discovered bitter animosity against several of them. Against me, his rage has been so vehement, as to have caused him, more than once, to forget the decorum which, in his situation, ought to have been an inviolable law. It will not appear an exaggeration to those who have studied his character, to suppose that he is capable of being alienated from a system to which he has been attached, because it is up-

held by men whom he hates. How large a share this may have had in some recent aberrations, cannot easily be determined.

Occurrences which have either happened or come to light since the election of Mr. Adams to the Presidency, confirming my unfavorable forebodings of his character, have given new and decisive energy, in my mind, to the sentiment of his unfitness for the station.

The letter which has just appeared in the public prints, written by him, while Vice-President, to Tench Coxe, is of itself conclusive evidence of the justness of this sentiment. It is impossible to speak of this transaction in terms suited to its nature, without losing sight that Mr. Adams is President of the United States.

This letter avows the *suspicion*, that the appointment of Mr. Pinckney to the court of London, had been procured or promoted by British influence. And considering the parade with which the story of the Duke of Leeds is told, it is fair to consider that circumstance as the principal, if not the sole, ground of the odious and degrading suspicion.

Let any man of candor or knowledge of the world, pronounce on this species of evidence.

It happened unfortunately for the Pinckneys, that, while boys, and long before our revolution, they went to school with a British duke, who was afterwards minister of the British government for the foreign department. This indiscreet duke, perhaps for no better reason than the desire of saying something to a parting American minister, and the want of something better to say, divulges to him the dangerous secret, that the two Pinckneys had been his class-mates, and goes the alarming length of making inquiry about their health. From this, it is sagaciously inferred, that these gentlemen have "*many powerful old friends in England;*" and from this again, that the Duke of Leeds (of course of the number of these old friends) had procured by intrigue the appointment of one of his class-mates to the court of London; or, in the language of the letter, that much British influence had been exerted in the appointment.

In the school of jealousy, stimulated by ill-will, logic like this may pass for substantial; but what is it in the school of reason and justice?

Though this contaminating connection of the Pinckneys with the Duke of Leeds, in their juvenile years, did not hinder them from fighting for the independence of their native country throughout our revolution; yet, the supposition is, that the instant the war was terminated, it transformed them from the soldiers of liberty into the tools of the British monarchy.

But the hostility of the Pinckneys to Mr. Adams, evidenced by their "long intrigue" against him, of which he speaks in the letter, is perhaps intended as a still stronger proof of their devotion to Great Britain—the argument may be thus understood. Mr. Adams is the bulwark of his country against foreign influence. The batteries of every foreign power, desirous of acquiring an ascendant in our affairs, are of consequence always open against him—and, the presumption, therefore, must be, that every citizen who is his enemy, is the confederate of one or another of those foreign powers.

Let us, without contesting this argument of self-love, examine into the facts upon which its applicability must depend.

The evidence of the "long intrigue" seems to be, that the family of the Pinckneys contributed to limit the duration of Mr. Adams's commission to the court of London to the term of three years, in order to make way for some of themselves to succeed him. This, it must be confessed, was a long-sighted calculation in a government like ours.

A summary of the transaction will be the best comment on the inference which has been drawn.

The resolution of Congress by which Mr. Adams's commission was limited, was a general one, applying to the commissions of all ministers to foreign courts. When it was proposed and adopted, it is certain that neither of the two Pinckneys was a member of Congress; and it is believed that they were both at Charleston, in South Carolina, their usual place of abode, more than eight hundred miles distant from the seat of government.

But they had, it seems, a *cousin*, Mr. Charles Pinckney, who

was in Congress; and this cousin it was who moved the restrictive resolution. Let us inquire who seconded and who voted for it.

It was seconded by Mr. Howell, a member from Rhode Island, *the very person who nominated Mr. Adams as minister to Great Britain*, and was voted for by the four Eastern States, with New-York, New Jersey, Maryland and South Carolina. Mr. Gerry, always a zealous partisan of Mr. Adams, was among the supporters of the resolution. To make out this to be a machination of the two Pinckneys, many things must be affirmed:—First, that their cousin Charles is always subservient to their views (which would equally prove that they have long been, and still are, opposers of the Federal Administration:)—Second, that this cunning wight had been able to draw the *four Eastern States* into his plot, as well as New-York, New Jersey, Maryland, and South Carolina:—Third, that the Pinckneys could foresee, at the distance of three years, the existence of a state of things which would enable them to reap the fruit of their contrivance.

Would not the circumstances better warrant the suspicion that the resolution was a contrivance of the friends of Mr. Adams to facilitate in some way his election, and that Mr. Pinckney was their coadjutor, rather than their prompter?

But the truth most probably is, that the measure was a mere precaution to bring under frequent review the propriety of continuing a minister at a particular court, and to facilitate the removal of a disagreeable one, without the harshness of formally displacing him. In a policy of this sort, the cautious maxims of New England would very naturally have taken a lead.

Thus, in the very grounds of the suspicion, as far as they appear, we find its refutation. The complete futility of it will now be illustrated by additional circumstances.

It is a fact, that the rigor with which the war was prosecuted by the British armies in our Southern quarter, had produced among the friends of our revolution there, more animosity against the British government, than in the other parts of the United States: and it is a matter of notoriety, in the same quarter, that this disposition was conspicuous among the Pinckneys, and their

connections. It may be added, that they were likewise known to have been attached to the French revolution, and to have continued so, till long after the appointment of Mr. Thomas Pinckney to the court of London.

These propensities of the gentlemen, were certainly not such as to make them favorites of Great Britain, or the appointment of one of them to that court, an object of particular solicitude.

As far as appeared at the time, the idea of nominating Mr. Thomas Pinckney, originated with the then President himself: but whatever may have been its source, it is certain that it met the approbation of the whole administration, Mr. Jefferson included. This fact alone, will go far to refute the surmise of a British agency in the appointment.

Supposing that, contrary to all probability, Great Britain had really taken some unaccountable fancy for Mr. Pinckney, upon whom was her influence exerted?

Had the virtuous, circumspect *Washington* been ensnared in her insidious toils? Had she found means for once to soften the stern, inflexible hostility of Jefferson? Had Randolph been won by her meretricious caresses? Had Knox, the uniform friend of Mr. Adams, been corrupted by her seducing wil s? Or was it all the dark work of the *alien* Secretary of the Treasury? Was it this arch juggler, who debauched the principles, or transformed the prejudices of Mr. Pinckney; who persuaded the British government to adopt him as a pliant instrument; who artfully induced the President to propose him as of his own selection; who lulled the zealous vigilance of Jefferson and Randolph, and surprised the unsuspecting frankness of Knox?

But when the thing had been accomplished, no matter by what means, it was surely to have been expected that the man of its choice would have been treated at the court of London with distinguished regard, and that his conduct towards that court would have been marked, if not by some improper compliances, at least by some displays of extraordinary complaisance.

Yet, strange as it may appear, upon Mr. Adams's hypothesis, it might be proved, if requisite, that neither the one nor the other took place. It might be proved that, far from Mr. Pinck-

ney's having experienced any flattering distinctions, incidents not pleasant to his feelings had occurred, and that in the discharge of his official functions he had advanced pretensions in favor of the United States, from which, with the approbation of the then Secretary of State, Mr. Jefferson, he was instructed to desist.

What will Mr. Adams or his friends reply to all these facts? How will he be excused for indulging and declaring, on grounds so frivolous, a suspicion so derogatory of a man so meritorious—of a man who has acted in a manner so unexceptionable?

But a more serious question remains: How will Mr. Adams answer to the government and to his country, for having thus wantonly given the sanction of his opinion to the worst of the aspersions which the enemies of the administration have impudently thrown upon it? Can we be surprised that such a torrent of slander was poured out against it, when a man, the second in official rank, the second in the favor of the friends of the government, stooped to become himself one of its calumniators? It is peculiarly unlucky for Mr. Adams in this affair, that he is known to have desired, at the time, the appointment which was given to Mr. Pinckney. The President declined the measure, thinking that it was compatible neither with the spirit of the Constitution nor with the dignity of the Government, to designate the Vice-President to such a station.

This letter, better than volumes, developes the true, the unfortunate character of Mr. Adams.

The remaining causes of dissatisfaction with him respect his conduct in the office of President, which, in my opinion, has been a heterogeneous compound of right and wrong, of wisdom and error.

The outset was distinguished by a speech which his friends lamented as temporizing. It had the air of a lure for the favor of his opponents at the expense of his sincerity; but being of an equivocal complexion, to which no precise design can be annexed, it is barely mentioned as a circumstance, which, in conjunction with others of a more positive tint, may serve to explain character.

It is in regard to our foreign relations, that the public measures of Mr. Adams first attract criticism.

It will be recollected that General Pinckney, the brother of Thomas, and the gentleman now supported together with Mr. Adams, had been deputed by President Washington as successor to Mr. Monroe, and had been refused to be received by the French government in his quality of minister plenipotentiary.

This, among those of the well-informed, who felt a just sensibility for the honor of their country, excited much disgust and resentment. But the opposition party, ever too ready to justify the French government at the expense of their own, vindicated or apologized for the ill treatment: and the mass of the community, though displeased with it, did not appear to feel the full force of the indignity.

As a final effort for accommodation, and as a mean, in case of failure, of enlightening and combining public opinion, it was resolved to make another, and a more solemn, experiment, in the form of a commission of three.

This measure (with some objections to the detail) was approved by all parties; by the anti-federalists, because they thought no evil so great as the rupture with France; by the federalists, because it was their system to avoid war with every power, if it could be done without the sacrifice of essential interests or absolute humiliation.

Even such of them who conceived that the insults of the French government, and the manifestation of its ill-will, had already gone far enough to call for measures of vigor, perceiving that the nation was not generally penetrated with the same conviction, and would not support with zeal measures of that nature, unless their necessity was rendered still more apparent, acquiesced in the expediency of another mission. They hoped that it would serve either to compose the differences which existed, or to make the necessity of resistance to the violence of France, palpable to every good citizen.

The expediency of the step was suggested to Mr. Adams, through a federal channel, a considerable time before he determined to take it. He hesitated whether it could be done after the rejection of General Pinckney, without national debasement. The doubt was an honorable one; it was afterwards very pro-

perly surrendered to the cogent reasons which pleaded for a further experiment.

The event of this experiment is fresh in our recollection. Our envoys, like our minister, were rejected. Tribute was demanded as a preliminary to negotiation. To their immortal honor, though France at the time was proudly triumphant, they repelled the disgraceful pretension. Americans will never forget that General Pinckney was a member, and an efficient member, of this commission.

This conduct of the French government, in which it is difficult to say, whether despotic insolence or unblushing corruption was most prominent, electrified the American people with a becoming indignation. In vain the partisans of France attempted to extenuate. The public voice was distinct and audible. The nation, disdaining so foul an overture, was ready to encounter the worst consequences of resistance.

Without imitating the flatterers of Mr. Adams, who, in derogation from the intrinsic force of circumstances, and from the magnanimity of the nation, ascribe to him the whole merits of producing the spirit which appeared in the community, it shall with cheerfulness be acknowledged that he took upon the occasion a manly and courageous lead—that he did all in his power to rouse the pride of the nation—to inspire it with a just sense of the injuries and outrages which it had experienced, and to dispose it to a firm and magnanimous resistance; and that his efforts contributed materially to the end.

The friends of the government were not agreed as to ulterior measures. Some were for immediate and unqualified war; others for a more mitigated course; the dissolution of treaties, preparation of force by land and sea, partial hostilities of a defensive tendency; leaving to France the option of seeking accommodation, or proceeding to open war. The latter course prevailed.

Though not as bold and energetic as the other, yet, considering the prosperous state of French affairs when it was adopted, and how many nations had been appalled and prostrated by the French power, the conduct pursued bore sufficiently the marks of courage and elevation to raise the national character to an exalted height throughout Europe.

Much is it to be deplored that we should have been precipitated from this proud eminence without necessity, without temptation.

The latter conduct of the President forms a painful contrast to his commencement. Its effects have been directly the reverse. It has sunk the tone of the public mind—it has impaired the confidence of the friends of the government in the executive chief—it has distracted public opinion—it has unnerved the public councils—it has sown the seeds of discord at home, and lowered the reputation of the government abroad. The circumstances which preceded, aggravate the disagreeableness of the results. They prove that the injudicious things which have been acted, were not the effects of any regular plan, but the fortuitous emanations of momentary impulses.

The session, which ensued the promulgation of the dispatches of our commissioners, was about to commence. Mr. Adams arrived at Philadelphia from his seat at Quincy. The tone of his mind seemed to have been raised, rather than depressed.

It was suggested to him, that it might be expedient to insert in his speech to Congress, a sentiment of this import: That after the repeatedly rejected advances of this country, its dignity required that it should be left with France in future to make the first overture; that if, desirous of reconciliation, she should evince the disposition by sending a minister to this government, he would be received with the respect due to his character, and treated with in the frankness of a sincere desire of accommodation.

The suggestion was received in a manner both indignant and intemperate.

Mr. Adams declared, as a sentiment which he had adopted on mature reflection:—*That if France should send a minister to-morrow, he would order him back the day after.*

So imprudent an idea was easily refuted. Little argument was requisite to show that, by a similar system of retaliation, when one government in a particular instance had refused the envoy of another, nations might entail upon each other perpetual hostility, mutually barring the avenues of explanation.

In less than forty-eight hours from this extraordinary sally, the mind of Mr. Adams underwent a total revolution—he resolved not only to insert in his speech the sentiment which had been proposed to him, but to go farther, and to declare, that if France would give explicit assurances of receiving a minister from this country, with due respect, he would send one.

In vain was this extension of the sentiment opposed by all his ministers, as being equally incompatible with good policy, and with the dignity of the nation—he obstinately persisted, and the pernicious declaration was introduced.

'I call it pernicious, because it was the groundwork of the false steps which have succeeded.

The declaration recommended to the President was a prudent one.

The measures of Congress, by their mitigated form, showed that an eye had been still kept upon pacification. A numerous party were averse from war with France at any rate. In the rest of the community, a strong preference of honorable accommodation to final rupture was discernible, even amidst the effusions of resentment.

The charges which we had exhibited in the face of the world against the French government, were of a high and disgraceful complexion; they had been urged with much point and emphasis.

To give an opening to France to make conciliatory propositions, some salve for her pride was necessary. It was also necessary she should be assured that she would not expose herself to an affront by a refusal to receive the agent whom she might employ for that purpose. The declaration proposed fulfilled both objects.

It was likely to have another important advantage. It would be a new proof to the American people of the moderate and pacific temper of their government; which would tend to preserve their confidence, and to dispose them more and more to meet inevitable extremities with fortitude and without murmurs.

But the supplement to the declaration was a blamable excess. It was more than sufficient for the ends to be answered. It waived

the point of honor, which, after two rejections of our ministers, required that the next mission between the two countries should proceed from France. After the mortifying humiliations we had endured, the national dignity demanded that this point should not be departed from without necessity. No such necessity could be pretended to exist: moreover, another mission by us would naturally be regarded as evidence of a disposition on our part to purchase the friendship of revolutionary France, even at the expense of honor; an impression which could hardly fail to injure our interests with other countries: and the measure would involve the further inconvenience of transferring the negotiation from this country, where our government could regulate it according to its own view of exigencies, to France, where that advantage would be enjoyed by her government, and where the power of judging for us must be delegated to commissioners; who, acting under immense individual responsibility, at a distance too great for consultation, would be apt to act with hesitancy and irresolution, whether the policy of the case required concession or firmness. This was to place it too much in the power of France to manage the progress of the negotiation according to events.

It has been said that Paris was wisely preferred as the place of negotiation, because it served to avoid the caballings of a French minister in this country. But there is not enough in this argument to counterbalance the weighty considerations on the other side. The intrigues of Genet and his successors were perplexing to the government, chiefly because they were too well seconded by the prepossessions of the people. The great alteration in public opinion, had put it completely in the power of our executive to control the machinations of any future public agent of France. It ought also to be remembered, that if France has not known agents, she never will be without secret ones, and that her partisans among our citizens can much better promote her cause than any agents she can send. In fact, her agents, by their blunders, were in the event rather useful than pernicious to our affairs.

But is it likely that France would have sent a minister to this country? When we find, that from calculations of policy she

could brook the ignominy which the publication of the dispatches of our commissioners was calculated to bring upon her; and stifling her resentment, could invite the renewal of negotiation; what room can there be to doubt, that the same calculations would have induced her to send a minister to this country when an opening was given for it?

The French minister for foreign relations, through the French diplomatic agent at the Hague, had opened a communication with Mr. Murray, our resident there, for the purpose of reviving negotiation between the two countries. In this manner, assurances were given that France was disposed to treat, and that a minister from us would be received and accredited. But they were accompanied with intimations of the characters proper to be employed, and who would be likely to succeed; which was exceptionable, both as it savored of the pretension (justly censured by the President himself) of prescribing to other governments how they were to manage their own affairs; and as it might, according to circumstances, be construed into a tacit condition of the promise to receive a minister. Overtures so circuitous and informal, through a person who was not the regular organ of the French government for making them, to a person who was not the regular organ of the American government for receiving them, might be a very fit mode of preparing the way for the like overtures in a more authentic and obligatory shape. But they were a very inadequate basis for the institution of a new mission.

When the President pledged himself in his speech to send a minister, if satisfactory assurances of a proper reception were given, he must have been understood to mean such as were direct and official, not such as were both informal and destitute of a competent sanction.

Yet upon this loose and vague foundation, Mr. Adams precipitately nominated Mr. Murray as envoy to the French Republic, without previous consultation with any of his ministers. The nomination itself was to each of them, even to the Secretary of State, his constitutional counsellor in similar affairs, the first notice of the project.

Thus was the measure wrong, both as to mode and substance.

A President is not bound to conform to the advice of his ministers. He is even under no positive injunction to ask or require it. But the Constitution presumes that he will consult them; and the genius of our government and the public good recommend the practice.

As the President nominates his ministers, and may displace them when he pleases, it must be his own fault if he be not surrounded by men, who for ability and integrity deserve his confidence. And if his ministers are of this character, the consulting of them will always be likely to be useful to himself and to the state. Let it even be supposed that he is a man of talents superior to the collected talents of all his ministers (which can seldom happen, as the world has seen but few Fredericks), he may, nevertheless, often assist his judgment by a comparison and collision of ideas. The greatest genius, hurried away by the rapidity of its own conceptions, will occasionally overlook obstacles which ordinary and more phlegmatic men will discover, and which, when presented to his consideration, will be thought by himself decisive objections to his plans.

When, unhappily, an ordinary man dreams himself to be a Frederick, and through vanity refrains from counselling with his constitutional advisers, he is very apt to fall into the hands of miserable intriguers, with whom his self-love is more at ease, and who without difficulty slide into his confidence, and by flattery govern him.

The ablest men may profit by advice. Inferior men cannot dispense with it; and if they do not get it through legitimate channels, it will find its way to them, through such as are clandestine and impure.

Very different from the practice of Mr. Adams was that of the modest and sage Washington. He consulted much, pondered much, resolved slowly, resolved surely.

And as surely, Mr. Adams might have benefited by the advice of his ministers.

The stately system of not consulting ministers is likely to have a further disadvantage. It will tend to exclude from places of primary trust the men most fit to occupy them.

Few and feeble are the interested inducements to accept a place in our administration. Far from being lucrative, there is not one which will not involve pecuniary sacrifice to every *honest* man of pre-eminent talents. And has not experience shown, that he must be fortunate indeed, if even the successful execution of his task can secure to him consideration and fame? Of a large harvest of obloquy he is sure.

If excluded from the counsels of the Executive Chief, his office must become truly insignificant. What able and virtuous man will long consent to be so miserable a pageant?

Every thing that tends to banish from the Administration able men, tends to diminish the chances of able counsels. The probable operation of a system of this kind, must be to consign places of the highest trust to incapable honest men, whose inducement will be a livelihood, or to capable dishonest men, who will seek indirect indemnifications for the deficiency of direct and fair inducements.

The precipitate nomination of Mr. Murray, brought Mr. Adams into an awkward predicament.

He found it necessary to change his plan in its progress, and instead of one, to nominate three envoys, and to superadd a promise, that, though appointed, they should not leave the United States till further and more perfect assurances were given by the French government.

This remodification of the measure was a virtual acknowledgment that it had been premature. How unseemly was this fluctuation in the Executive Chief. It argued either instability of views, or want of sufficient consideration beforehand. The one or the other, in an affair of so great moment, is a serious reproach.

Additional and more competent assurances were received; but before the envoys departed, intelligence arrived of a new revolution in the French government; which, in violation of the Constitution, had expelled two of the Directory.

Another revolution: another Constitution overthrown. Surely here was reason for a pause, at least till it was ascertained that the new Directory would adhere to the engagement of its

predecessors, and would not send back our envoys with disgrace.

In the then posture of French affairs, which externally as well as internally were unprosperous, a pause was every way prudent. The recent revolution was a valid motive for it.

Definitive compacts between nations, called real treaties, are binding, notwithstanding revolutions of governments. But to apply the maxim to ministerial acts, preparatory only to negotiation, is to extend it too far; to apply it to such acts of an unstable revolutionary government (like that of France at that time) is to abuse it.

Had any policy of the moment demanded it, it would have been not at all surprising to have seen the new Directory disavowing the assurance which had been given, and imputing it as a crime to the ex-directors, on the pretence that they had prostrated the dignity of the republic by courting the renewal of negotiation with a government which had so grossly insulted it.

Yet our envoys were dispatched without a ratification of the assurance by the new Directory, at the hazard of the interests and the honor of the country.

Again, the dangerous and degrading system of not consulting ministers, was acted upon.

When the news of the revolution in the Directory arrived, Mr. Adams was at his seat in Massachusetts. His ministers addressed to him a joint letter, communicating the intelligence, and submitting to his consideration, whether that event ought not to suspend the projected mission. In a letter which he afterwards wrote from the same place, he directed the preparation of a draft of instructions for the envoys, and intimated that their departure would be suspended *for some time.*

Shortly after he came to Trenton, where he adjusted with his ministers the tenor of the instructions to be given; but he observed a profound silence on the question, whether it was expedient that the mission should proceed. The morning after the instructions were settled, he signified to the Secretary of State that the envoys were immediately to depart.

He is reported to have assigned as the reason of his silence,

that he knew the opinions of his ministers from their letter; that he had irrevocably adopted an opposite one; and that he deemed it most delicate not to embarrass them by a useless discussion.

But would it not have been more prudent to have kept his judgment in some degree of suspense, till after an interview and discussion with his ministers? Ought he to have taken it for granted that the grounds of his opinion were so infallible, that there was no possibility of arguments being used which were sufficient to shake them? Ought he not to have recollected the sudden revolution which his judgment had undergone in the beginning of the business, and to have inferred from this, that it might have yielded in another instance to better lights? Was it necessary for him, if he had had a conference with his ministers, to have alarmed their delicacy, by prefacing the discussion with a declaration that he had fixed an unalterable opinion? Did not the intimation respecting a suspension of the departure of the envoys, imply that this would continue till there was a change of circumstances? Was it not a circumstance to strengthen expectation in the ministers, when consulted about the instructions, that they would be heard as to the principal point, previous to a definitive resolution?

Giving Mr. Adams credit for sincerity, the desultoriness of his mind is evinced by the very different grounds upon which, at different times, he has defended the propriety of the mission.

Sometimes he has treated with ridicule the idea of its being a measure which would terminate in peace; asserting that France would not accommodate, on terms admissible by the United States, and that the effect to be expected from the mission, was the demonstration of this truth, and the union of public opinion on the necessity of war.

Sometimes, and most frequently, he has vindicated the measure as one conformable with the general and strong wish of the country for peace, and as likely to promote that desirable object.

It is now earnestly to be hoped, that the final issue of the mission, in an honorable accommodation, may compensate for the

sacrifice of consistency, dignity, harmony, and reputation, at which it has been undertaken.

But even in relation to the adjustment of differences with the French Republic, the measure was injudicious. It was probable that it would delay, rather than accelerate, such an adjustment.

The situation of French affairs, at the time of the overtures for renewing the negotiation, coincides with the solicitude which was manifested for that object, to render it likely that, at this juncture, France really desired accommodation. If this was so, it is presumable (as observed in another place) that, had not the declaration about sending a minister to her intervened, she would have sent one to us, with adequate powers and instructions. Towards a minister here, our government might have acted such a part as would have hastened a conclusion: and the minister, conforming to the impressions of his government when he was sent, it is not improbable that a desirable arrangement might some time since have been effected.

Instead of this, the mode pursued naturally tended to delay. A lapse of time, by changing the circumstances, is very apt to change the views of governments. The French agents, charged with the negotiation at Paris, could find little difficulty in protracting it till events (such as the fate of a campaign) should be ascertained, as a guide to rise or fall in their pretensions. And in this way, obstacles might supervene, which would not have existed in the beginning, and which might render accommodation impracticable—or practicable only on terms injurious to our interests.

Thus, on every just calculation, whatever may be the issue, the measure, in reference either to our internal or foreign affairs, even to our concerns with France herself, was alike impolitic.

It is sometimes defended by the argument, that when our commissioners departed, there were circumstances in the position of Europe which made a general peace during the succeeding winter probable, and that it would have been dangerous for this country, remote as it is from Europe, to have been without agents on the spot authorized to settle its controversy with France, at the same epoch. The country, it is said, might otherwise have

been left in the perilous situation of having a subsisting quarrel with France, after she had disembarrassed herself of all her European enemies.

The idea that a general peace was likely to happen during that winter, was, I know, entertained by Mr. Adams himself; for, in a casual conversation at Trenton, he expressed it to me, and I supported a different opinion. But waiving now a discussion of the point, and admitting that the expectation was entertained on substantial grounds, though it has not been verified by experience, still the argument deduced from it is not valid.

The expediency of the measure must be tested by the state of things when it had its inception. At the time the foundation was laid for it by the speech, when even the nomination of Mr. Murray took place, the affairs of France and of her enemies portended a result very inauspicious to her, and very different from that of a general peace, on conditions which would leave her the inclination or the power to prosecute hostilities against this country.

But even on the supposition of other prospects, Mr. Adams had the option of a substitute far preferable to the expedient which he chose.

He might secretly and confidentially have nominated one or more of our ministers actually abroad for the purpose of treating with France; with *eventual* instructions predicated upon appearances of an approaching peace.

An expedient of this sort, merely provisory, could have had none of the bad effects of the other. If the secret was kept, it could have had no inconvenient consequences; if divulged, it would have been deemed here and elsewhere, a prudent precaution only, recommended by the distant situation of the country, to meet future casualties, with which we might otherwise not have been able to keep pace. To the enemies of France, it could have given no ill impression of us; to France, no motive to forbear other conciliatory means, for one and the same reason, namely, because the operation was to be eventual.

There are some collateral incidents connected with this business of the mission, which it may not be useless to mention, as

they will serve still farther to illustrate the extreme propensity of Mr. Adams's temper to jealousy.

It happened that I arrived at Trenton a short time before the President—Chief Justice Elsworth a short time after him. This was considered as evidence of a combination between the heads of departments, the Chief Justice and myself, to endeavor to influence or counteract him in the affair of the mission.

The truth, nevertheless, most certainly is, that I went to Trenton with General Wilkinson, pursuant to a preconcert with him of some weeks' standing, to accelerate, by personal conferences with the Secretary of War, the adoption and execution of arrangements which had been planned between that general and myself, for the future disposition of the western army; that when I left New-York upon this journey, I had no expectation whatever that the President would come to Trenton, and that I did not stay at this place a day longer than was indispensable to the object I have stated. General Wilkinson, if necessary, might be appealed to, not only as knowing that this was a real and sincere purpose of my journey, but as possessing satisfactory evidence, that in all probability I had no anticipation of the movement of the President.

As to Chief Justice Elsworth, the design of his journey was understood to be to meet his colleague, Governor Davy, at the seat of the government, where they would be at the fountain head of information, and would obtain any lights or explanations which they might suppose useful. This was manifestly a very natural and innocent solution of the Chief Justice's visit, and I believe the true one.

Yet these simple occurrences were to the jealous mind of Mr. Adams, "confirmation strong," of some mischievous plot against his independence.

The circumstance, which next presents itself to examination, is the dismission of the two secretaries, Pickering and M'Henry. This circumstance, it is known, occasioned much surprise, and a strong sensation to the disadvantage of Mr. Adams.

It happened at a peculiar juncture, immediately after the unfavorable turn of the election in New-York, and had much the

air of an explosion of combustible materials which had been long prepared, but which had been kept down by prudential calculations respecting the effect of an explosion upon the friends of those ministers in the State of New-York. Perhaps, when it was supposed that nothing could be lost in this quarter, and that something might be gained elsewhere by an atoning sacrifice of those ministers, especially Mr. Pickering, who had been for some time particularly odious to the opposition party, it was determined to proceed to extremities. This, as a mere conjecture, is offered for as much as it may be worth.

One fact, however, is understood to be admitted, namely, that neither of the dismissed ministers had given any new or recent cause for their dismission.

A primary cause of the state of things which led to this event, is to be traced to the ungovernable temper of Mr. Adams. It is a fact that he is often liable to paroxysms of anger, which deprive him of self-command, and produce very outrageous behavior to those who approach him. Most, if not all his ministers, and several distinguished members of the two Houses of Congress, have been humiliated by the effects of these gusts of passion.

This violence, and the little consideration for them which was implied in declining to consult them, had occasioned great dryness between the President and his ministers, except, I believe, the Secretary of the Navy.

The neglect was, of course, most poignant to Mr. Pickering, because it had repeatedly operated in matters appertaining to his office. Nor was it in the disposition of this respectable man, justly tenacious of his own dignity and independence, to practise condescentions towards an imperious chief. Hence the breach constantly grew wider and wider, till a separation took place.

The manner of the dismission was abrupt and uncourteous; ill suited to a man, who, in different stations, had merited so much from his country.

Admitting that when the President and his minister had gotten into a situation thus unpleasant, a seperation was unavoidable; still, as there was no surmise of misconduct, the case required a frank politeness, not an uncouth austerity.

But the remark most interesting in this particular to the character of the President, is, that it was by his own fault that he was brought into a situation which might oblige him to displace a minister, whose moral worth has his own suffrage, and whose abilities and services have that of the public.

The dismission of this minister was preceded by a very curious circumstance. It was, without doubt, announced as a thing shortly to happen in an opposition circle, before any friend of the government had the slightest suspicion of it. This circumstance, taken in connection with the period at which it happened, naturally provokes the conjecture that there may have been some collateral inducements to the step.

The dismission of the Secretary at War took place about the same time. It was declared in the sequel of a long conversation between the President and him, of a nature to excite alternately pain and laughter; pain, for the weak and excessive indiscretions of a Chief Magistrate of the United States; laughter at the ludicrous topics which constituted charges against this officer.

A prominent charge was, that the Secretary, in a report to the House of Representatives, had *eulogized General Washington*, and had attempted to *eulogize* General *Hamilton*, which was adduced as one proof of a combination, in which the Secretary was engaged, to depreciate and injure him, the President.

Wonderful! passing wonderful! that an eulogy of the dead patriot and hero, of the admired and beloved Washington, consecrated in the affections and reverence of his country, should, in any shape, be irksome to the ears of his successor!

Singular, also, that an encomium on the officer, first in rank in the armies of the United States, appointed and continued by Mr. Adams, should in his eyes have been a crime in the head of the War Department, and that it should be necessary, in order to avert his displeasure, to obliterate a compliment to that officer from an official report.

Another principal topic of accusation was, that the Secretary had, with the other ministers, signed the joint letter, which had

been addressed to the President respecting a suspension of the mission to France. It was ostentatiously asked, how he or they should pretend to know any thing of *diplomatic affairs;* and it was plainly intimated that it was presumption in them to have intermeddled in such affairs.

A variety of things equally frivolous and *outré* passed. By way of episode, it fell to my lot to be distinguished by a torrent of gross personal abuse; and I was accused of having contributed to the loss of the election in New-York, out of ill will to Mr. Adams: a notable expedient truly for giving vent to my ill will. Who is so blind as not to see, that if actuated by such a motive, I should have preferred by the success of the election, to have secured the choice of electors for the State of New-York, who would have been likely to co-operate in the views by which I was governed?

To those who have not had opportunities of closely inspecting the weaknesses of Mr. Adams's character, the details of this extraordinary interview would appear incredible; but to those who have had these opportunities, they would not even furnish an occasion of surprise. But they would be, to all who knew their truth, irrefragable proofs of his unfitness for the station of Chief Magistrate.

Ill treatment of Mr. M'Henry cannot fail to awaken the sympathy of every person well acquainted with him. Sensible, judicious, well-informed, of an integrity never questioned, of a temper, which, though firm in the support of principles, has too much moderation and amenity to offend by the manner of doing it—I dare pronounce that he never gave Mr. Adams cause to treat him, as he did, with unkindness. If Mr. Adams thought that his execution of his office indicated a want of the peculiar qualifications required for it, he might have said so with gentleness, and he would have only exercised a prerogative intrusted to him by the Constitution, to which no blame could have attached; but it was unjustifiable to aggravate the deprivation of office by humiliating censures and bitter reproaches.

The last material occurrence in the administration of Mr. Adams, of which I shall take notice, is the pardon of *Fries*,

and other principals in the late insurrection in Pennsylvania.

It is a fact that a very refractory spirit has long existed in the western counties of that State. Repeatedly have its own laws been opposed with violence, and as often, according to my information, with impunity.

It is also a fact, which every body knows, that the laws of the Union, in the vital article of revenue, have been twice resisted in the same State by combinations so extensive, and under circumstances so violent, as to have called for the employment of military force; once under the former President, and once under the actual President; which together cost the United States nearly a million and a half of dollars.

In the first instance it happened, that by the early submission of most of the leaders, upon an invitation of the government, few offenders of any consequence remained subject to prosecution. Of these, either from the humanity of the juries or some deficiency in the evidence, not one was capitally convicted. Two poor wretches only were sentenced to die, one of them little short of an idiot, the other a miserable follower in the hindmost train of rebellion, both being so insignificant in all respects, that after the lenity shown to the chiefs, justice would have worn the mien of ferocity, if she had raised her arm against them. The sentiment that their punishment ought to be remitted was universal: and the President, yielding to the special considerations, granted them pardons.

In the last instance, some of the most important of the offenders were capitally convicted—one of them by the verdicts of two successive juries. The general opinion of the friends of the government demanded an example, as indispensable to its security.

The opinion was well founded. Two insurrections in the same State, the one upon the heels of the other, demonstrated a spirit of insubordination or disaffection which required a strong corrective. It is a disagreeable fact, forming a weighty argument in the question, that a large part of the population of Penn-

sylvania is of a composition which peculiarly fits it for the intrigues of factious men, who may desire to disturb or overthrow the government. And it is an equally disagreeable fact, that disaffection to the national government is in no other State more general, more deeply rooted, or more envenomed.

The late Governor Mifflin himself informed me, that in the first case, insurrection had been organized down to the very liberties of Philadelphia, and that had not the government anticipated it, a general explosion would speedily have ensued.

It ought to be added, that the impunity so often experienced, had made it an article in the creed of those who were actuated by the insurgent spirit, that neither the General nor the State government dared to inflict capital punishment.

To destroy this persuasion, to repress this dangerous spirit, it was essential that a salutary rigor should have been exerted, and that those who were under the influence of the one and the other should be taught that they were the dupes of a fatal illusion.

Of this, Mr. Adams appeared so sensible, that while the trials were pending, he more than once imprudently threw out, that the accused must found their hopes of escape either in their innocence or in the lenity of the juries; since from him, in case of conviction, they would have nothing to expect. And a very short time before he pardoned them, he declared (b) with no small ostentation, that the mistaken clemency of Washington on the former occasion, had been the cause of the second insurrection, and that he would take care there should not be a third, by giving the laws their full course against the convicted offenders.

Yet he thought proper, as if distrusting the courts and officers of the United States, to resort through the Attorney-General to the counsel of the culprits, for a statement of their cases; (c) in which was found, besides some objections of form, the novel doctrine, disavowed by every page of our law books, that treason does not consist of resistance by force to a public law; unless it be an act relative to the militia, or other military force.

(b) (c) Of these two facts, my evidence is inferior to that which supports the other allegations of this letter; yet it is so strong that I feel myself warranted to state them.

And upon this, or upon some other ground, not easy to be comprehended, he of a sudden departed from all his former declarations, and, against the unanimous advice of his ministers, with the Attorney-General, came to the resolution, which he executed, of pardoning all those who had received sentence of death.

No wonder that the public was thunderstruck at such a result —that the friends of the government regarded it as a virtual dereliction—it was impossible to commit a greater error. The particular situation of Pennsylvania, the singular posture of human affairs, in which there is so strong a tendency to the disorganization of government—the turbulent and malignant humors which exist, and are so industriously nourished throughout the United States; every thing loudly demanded that the Executive should have acted with exemplary vigor, and should have given a striking demonstration, that condign punishment would be the lot of the violent opposers of the laws.

The contrary course, which was pursued, is the most inexplicable part of Mr. Adams's conduct. It shows him so much at variance with himself, as well as with sound policy, that we are driven to seek a solution for it in some system of concession to his political enemies; a system the most fatal for himself, and for the cause of public order, of any that he could possibly devise. It is by temporizings like these, that men at the head of affairs, lose the respect both of friends and foes—it is by temporizings like these, that in times of fermentation and commotion, governments are prostrated, which might easily have been upheld by an erect and imposing attitude.

I have now gone through the principal circumstances in Mr. Adams's conduct, which have served to produce my disapprobation of him as Chief Magistrate. I pledge my veracity and honor, that I have stated none which are not either derived from my own knowledge, or from sources of information, in the highest degree, worthy of credit.

I freely submit it, sir, to your judgment, whether the grounds of the opinion I have expressed, are not weighty; and whether they are not sufficient to exculpate those federalists, who favor

the equal support of Mr. Pinckney, from all blame, and myself in particular, from the unworthy imputation of being influenced by private resentment.

At the same time, I will admit, though it should detract from the force of my representations, that I have causes of personal dissatisfaction with Mr. Adams. It is not my practice to trouble others with my individual concerns; nor should I do it at present, but for the suggestions which have been made. Even with this incentive, I shall do it as little as possible.

The circumstances of my late military situation, have much less to do with my personal discontent than some others. In respect to them, I shall only say, that I owed my appointment to the station and rank I held, to the *express stipulation* of General Washington, when he accepted the command of the army, afterwards *peremptorily insisted upon* by him, in *opposition* to the *strong wishes* of the President; and that, though second in rank, I was not promoted to the first place, when it became vacant, by the death of the commander-in-chief. As to the former, I should have had no cause to complain, if there had not been an apparent inconsistency in the measures of the President; if he had not nominated me *first* on the list of Major-Generals, and attempted afterwards to place me *third* in rank. As to the latter, the chief command, not being a matter of routine, the not promoting me to it, cannot be deemed a wrong or injury; yet certainly I could not see, in the omission, any proof of good will or confidence—or of a disposition to console me for the persecutions which I had incessantly endured. But I dismiss the subject, leaving to others to judge of my pretensions to the promotion, and of the weight, if any, which they ought to have had with the President.

On other topics, my sensations are far less neutral. If, as I have been assured from respectable authorities, Mr. Adams has repeatedly indulged himself in virulent and indecent abuse of me; if he has denominated me a man destitute of every moral principle; if he has stigmatized me as the leader of a British faction; then, certainly, I have a right to think that I have been most cruelly and wickedly traduced; then have I a right to appeal to all those who have been spectators of my public

actions; to all who are acquainted with my private character, in its various relations, whether such treatment of me, by Mr. Adams, is of a nature to weaken or to strengthen his claim to the approbation of wise and good men; then will I so far yield to the consciousness of what I am, as to declare, that in the cardinal points of public and private rectitude, above all, in pure and disinterested zeal for the interests and service of this country —I shrink not from a comparison with any arrogant pretender to superior and exclusive merit.

Having been repeatedly informed, that Mr. Adams had delineated me as the leader of a British faction, and having understood that his partisans, to counteract the influence of my opinion, were pressing the same charge against me, I wrote him a letter on the subject, dated the first of August last. No reply having been given by him to this letter, I, on the first of the present month, wrote him another; of both which letters I send you copies.

Of the purity of my public conduct in this, as in other particulars, I may defy the severest investigation.

Not only is it impossible for any man to give color to this absurd charge, by a particle of proof, or by any reasonable presumption; but I am able to show, that my conduct has uniformly given the lie to it.

I never advised any connection* with Great Britain, other than a commercial one; and in this I never advocated the giving to her any privilege or advantage which was not to be imparted to other nations. With regard to her pretensions as a belligerent power in relation to neutrals, my opinions, while in the Administration, to the best of my recollection, coincided with those of Mr. Jefferson. When, in the year 1793, her depredations on our commerce discovered a hostile spirit, I recommended one definitive effort to terminate differences by negotiation, to be

* I mean a lasting connection. From what I recollect of the train of my ideas, it is possible I may at some time have suggested a *temporary* connection for the purpose of co-operating against France, in the event of a definitive rupture; but of this I am not certain, as I well remember that the expediency of the measure was always problematical in my mind, and that I have occasionally discouraged it.

followed, if unsuccessful, by a declaration of war. I urged, in the most earnest manner, the friends of the Administration, in both Houses of Congress, to prepare by sea and land for the alternative, to the utmost extent of our resources; and to an extent far exceeding what any member of either party was found willing to go. For this alternative, I became so firmly pledged to the friends and enemies of the Administration, and especially to the President of the United States, in writing as well as verbally, that I could not afterwards have retracted without a glaring and disgraceful inconsistency. And being thus pledged, I explicitly gave it as my opinion to Mr. Jay, Envoy to Great Britain, that "*unless an adjustment of the differences with her could be effected on solid terms, it would be better to do nothing.*" When the treaty arrived, it was not without full deliberation and some hesitation, that I resolved to support it. The articles relative to the settlement of differences were upon the whole satisfactory; but there were a few of the others which appeared to me of a different character. The article respecting contraband, though conformable with the general law of nations, was not in all its features such as could have been wished. The XXVth article, which gave asylum in our ports, under certain exceptions, to privateers with their prizes, was in itself an ineligible one, being of a nature to excite the discontent of nations against whom it should operate, and deriving its justification from the example before set of an equivalent stipulation in our treaty with France. The XIIth article, was in my view inadmissible. The enlightened negotiator, not unconscious that some parts of the treaty were less well arranged than was to be desired, had himself hesitated to sign: but he had resigned his scruples to the conviction that nothing better could be effected, and that aggregately considered, the instrument would be advantageous to the United States. On my part, the result of mature reflection was, that as the subjects of controversy which had threatened the peace of the two nations, and which implicated great interests of this country, were in the essential points well adjusted, and as the other articles would expire in twelve years after the ratification of the treaty, it would be wise and right to confirm the com-

pact, with the exception of the XIIth article. Nevertheless, when an account was received that the British cruisers had seized provisions going to ports of the French dominions, not in fact blockaded or besieged, I advised the President to ratify the treaty conditionally only, that is, with express instructions not to exchange ratifications, unless the British government would disavow a construction of the instrument authorizing the practice, and would discontinue it.

After the rejection of Mr. Pinckney by the government of France, immediately after the instalment of Mr. Adams as President, and long before the measure was taken, I urged a member of Congress, then high in the confidence of the President, to propose to him the immediate appointment of three commissioners, of whom Mr. *Jefferson* or Mr. *Madison* to be one, to make another attempt to negotiate. And when afterwards commissioners were appointed, I expressly gave it as my opinion, that indemnification for spoliations, should not be a *sine qua non* of accommodation. In fine, I have been disposed to go greater lengths to avoid rupture with France than with Great Britain; to make greater sacrifices for reconciliation with the former than with the latter.

In making this avowal, I owe it to my own character to say, that the disposition I have confessed, did not proceed from predilection for France (revolutionary France, after her early beginnings, has been always to me an object of horror), nor from the supposition that more was to be feared from France, as an enemy, than from Great Britain (I thought that the maritime power of the latter, could do us most mischief), but from the persuasion that the sentiments and prejudices of our country, would render war with France a more unmanageable business, than war with Great Britain.

Let any fair man pronounce, whether the circumstances which have been disclosed, bespeak the partisan of Great Britain, or the man exclusively devoted to the interests of this country. Let any delicate man decide, whether it must not be shocking to an ingenuous mind, to have to combat a slander so vile, after having sacrificed the interests of his family, and devoted the best part of his life to the service of that country, in counsel and in the field.

It is time to conclude.—The statement, which has been made, shows that Mr. Adams has committed some positive and serious errors of administration; that in addition to these, he has certain fixed points of character which tend naturally to the detriment of any cause of which he is the chief, of any administration of which he is the head; that by his ill humors and jealousies he has already divided and distracted the supporters of the government; that he has furnished deadly weapons to its enemies by unfounded accusations, and has weakened the force of its friends by decrying some of the most influential of them to the utmost of his power; and let it be added, as the necessary effect of such conduct, that he has made great progress in undermining the ground which was gained for the government by his predecessor, and that there is real cause to apprehend, it might totter, if not fall, under his future auspices. A new government, constructed on free principles, is always weak, and must stand in need of the props of a firm and good administration; till time shall have rendered its authority venerable, and fortified it by habits of obedience.

Yet with this opinion of Mr. Adams, I have finally resolved not to advise the withholding from him a single vote. The body of federalists, for want of sufficient knowledge of facts, are not convinced of the expediency of relinquishing him. It is even apparent, that a large proportion still retain the attachment which was once a common sentiment.—Those of them, therefore, who are dissatisfied, as far as my information goes, are, generally speaking, willing to forbear opposition, and to acquiesce in the equal support of Mr. Adams with Mr. Pinckney, whom they prefer. Have they not a claim to equal deference from those who continue attached to the former? Ought not these, in candor, to admit the possibility that the friends who differ from them, act not only from pure motives, but from cogent reasons? Ought they not, by a co-operation in General Pinckney, to give a chance for what will be a *safe* issue, supposing that they are right in their preference, and the best issue, should they happen to be mistaken? Especially, since by doing this they will increase the probability of excluding a third candidate, of whose unfitness all sincere federalists are convinced. If they do not pursue this course, they

will certainly incur an immense responsibility to their friends and to the government.

To promote this co-operation, to defend my own character, to vindicate those friends, who with myself have been unkindly aspersed, are the inducements for writing this letter. Accordingly, it will be my endeavor to regulate the communication of it in such a manner as will not be likely to deprive Mr. Adams of a single vote. Indeed, it is much my wish that its circulation could for ever be confined within narrow limits. I am sensible of the inconveniences of giving publicity to a similar development of the character of the Chief Magistrate of our country; and I lament the necessity of taking a step which will involve that result. Yet to suppress truths, the disclosure of which is so interesting to the public welfare as well as to the vindication of my friends and myself, did not appear to me justifiable.

The restraints, to which I submit, are a proof of my disposition to sacrifice to the prepossessions of those, with whom I have heretofore thought and acted, and from whom in the present question I am compelled to differ. To refrain from a decided opposition to Mr. Adams's re-election has been reluctantly sanctioned by my judgment; which has been not a little perplexed between the unqualified conviction of his unfitness for the station contemplated, and a sense of the great importance of cultivating harmony among the supporters of the government; on whose firm union hereafter will probably depend the preservation of order, tranquillity, liberty, property; the security of every social and domestic blessing.

New-York, August 1, 1800.

Sir:

It has been repeatedly mentioned to me, that you have, on different occasions, asserted the existence of a British faction in this country; embracing a number of leading or influential characters of the federal party (as usually denominated), and that you have sometimes named me, at others, plainly alluded to me, as one of this description of persons. And I have likewise been

assured, that of late some of your warm adherents, for electioneering purposes, have employed a corresponding language.

I must, sir, take it for granted, that you cannot have made such assertions or insinuations, without being willing to avow them, and to assign the reasons to a party who may conceive himself injured by them. I therefore trust, that you will not deem it improper, that I apply directly to yourself to ascertain from you, in reference to your own declarations, whether the information I have received, has been correct or not; and if correct, what are the grounds upon which you have founded the suggestion.

With respect, I have the honor to be,
Sir, your obedient servant,
A. H.

To JOHN ADAMS, Esq. *President of the United States.*

NEW-YORK, October 1, 1800.

SIR:

The time which has elapsed since my letter of the 1st of August was delivered to you, precludes the further expectation of an answer.

From this silence, I will draw no inference; nor will I presume to judge of the fitness of silence on such an occasion on the part of the Chief Magistrate of a republic, towards a citizen, who, without a stain, has discharged so many important public trusts.

But thus much I will affirm, that by whomsoever a charge of the kind mentioned in my former letter, may, at any time, have been made or insinuated against me, it is a base, wicked and cruel calumny; destitute even of a plausible pretext, to excuse the folly, or mask the depravity which must have dictated it.

With due respect, I have the honor to be,
Sir, your obedient servant,
A. H.

To JOHN ADAMS, Esq. *President of the United States.*

ADDRESS, TO THE ELECTORS OF THE STATE OF NEW-YORK.

1801.

FELLOW-CITIZENS:

We lately addressed you on the subject of the ensuing election for Governor and Lieutenant-Governor—recommending to your support Stephen Van Rensselaer and James Watson. Since that, we have seen the address of our opponents, urging your preference of George Clinton and Jeremiah Van Rensselaer.

The whole tenor of our address carries with it the evidence of a disposition to be temperate and liberal; to avoid giving occasion to mutual recrimination. It would have been agreeable to us to have seen a like disposition in our adversaries; but we think it cannot be denied that their address manifests a different one. It arraigns the principles of the federalists with extreme acrimony, and by the allusion to Great Britain, in the preposterous figure of the mantle, attributes to them a principle of action, which every signer of the address knows to have no existence, and which for its falsehood and malice merits indignation and disdain.

So violent an attack upon our principles justifies and calls for an exhibition of those of our opponents. To your good sense, to your love of country, to your regard for the welfare of yourselves and families, the comment is submitted.

The pernicious spirit which has actuated many of the leaders of the party denominated anti-federal, from the moment when our national Constitution was first proposed down to the present period, has not ceased to display itself in a variety of disgusting forms. In proportion to the prospect of success it has increased in temerity. Emboldened by a momentary triumph in the choice of our national Chief Magistrate, it seems now to have laid aside all reserve, and begins to avow projects of disorganization, with the sanction of the most respectable names of the

party, which before were merely the anonymous ravings of incendiary newspapers.

This precipitation in throwing aside the mask will, we trust, be productive of happy effects. It will serve to show that the mischievous designs ascribed to the party have not been the effusions of malevolence, the inventions of political rivalship, or the visionary forebodings of an over-anxious zeal; but that they have been just and correct inferences from an accurate estimate of characters and principles. It will serve to show, that moderate men, who have seen in our political struggles nothing more than a competition for power and place, have been deceived; that in reality the foundations of society, the essential interests of our nation, the dearest concerns of individuals, are staked upon the eventful contest. And, by promoting this important discovery, it may be expected to rally the virtuous and the prudent of every description round a common standard; to endeavor, by joint efforts, to oppose mounds to that destructive torrent, which in its distant murmuring seemed harmless, but in the portentous roaring of its nearer approach, menaces our country with all the horrors of revolutionary frenzy.

To what end, fellow-citizens, has your attention been carried across the Atlantic, to the revolution of France, and to that fatal war of which it has been the source? To what end are you told, that this is the most interesting conflict man ever witnessed —that it is a war of principles—a war between equal and unequal rights—between republicanism and monarchy—between liberty and tyranny?

What is there in that terrific picture which you are to admire or imitate? Is it the subversion of the throne of the *Bourbons*, to make way for the throne of the *Buonapartes?* Is it the undistinguishing massacre in prisons and dungeons, of men, women, and children? Is it the sanguinary justice of revolutionary tribunals, or the awful terrors of a guillotine? Is it the rapid succession of revolution upon revolution, erecting the transient power of one set of men upon the tombs of another? Is it the assassinations which have been perpetrated, or the new ones which are projected? Is it the open profession of impiety

in the public assemblies, or the ridiculous worship of a Goddess of Reason, or the still continued substitution of decades to the Christian Sabbath? Is it the destruction of commerce, the ruin of manufactures, the oppression of agriculture? Or, is it the pomp of war, the dazzling glare of splendid victories, the bloodstained fields of Europe, the smoking cinders of desolated cities, the afflicting spectacle of millions precipitated from plenty and comfort to beggary and misery? If it be none of these things, what is it?

Perhaps it is the existing government of France, of which your admiration is solicited?

Here, fellow-citizens, let us on our part invite you to a solemn pause. Mark, we beseech you, carefully mark, in this result, the fruit of those extravagant and noxious principles which it is desired to transplant into our happy soil.

Behold a consul for ten years elected, *not by the people*, but by a conservatory Senate, *self-created*, and *self continued for life;* a magistrate who, to the plenitude of executive authority, adds the peculiar and vast prerogative of an exclusive right to originate every law of the republic.

Behold a legistature elected, *not by the people*, but by the same conservative Senate, one branch for fourteen, the other for ten years; one branch with a right to debate the law proposed by the consul but not to propose; another branch with a right neither to debate nor propose; but merely to assent or dissent, leaving to the people nothing more than the phantom of representation, or the useless privilege of designating one *tenth* of their whole mass as *candidates* indiscriminately for the offices of the state according to the *option* of the conservatory Senate.

Behold this magic lantern of republicanism; the odious form of real despotism; garnished and defended by the bayonets of more than five hundred thousand men in disciplined array.

Do you desire an illustration of the practical effect of this despotic system, read it in the last advices from France. Read it in the exercise of a power by the chief consul, recognized to belong to him by the conservatory Senate, to banish indefinitely the citizens of France without trial, without the formality of a

legislative act. Then say, where can you find a more hideous despotism? Or, what ought ye to think of those men, who dare to recommend to you as the bible of your political creed, the principles of a revolution, which in its commencement, in its progress, in its termination, (if termination it can have, before it has overthrown the civilized world,) is only fitted to serve as a beacon to warn you to shun the gulfs, the quicksands, and the rocks of those enormous principles?

Surely ye will applaud neither the wisdom nor the patriotism of men, who can wish you to exchange the fair fabric of republicanism which you now enjoy, modelled and decorated by the hand of federalism, for that tremendous form of despotism which has sprung up amidst the volcanic eruptions of *principles at war* with all past and present experience, at war with the nature of man.

Or, was the allusion to France and her revolution, to the war of principles of which you have heard, intended to familiarize your ears to a war of arms, as one of the blessings of the new order of things? Facts, which cannot be mistaken, demonstrate that in the early period of the French revolution, it was the plan of our opponents to engage us in the war as associates of France. But at this late hour, when even the pretence of supporting the cause of liberty has vanished, when acquisition and aggrandizement have manifestly become the only, the exclusive objects of this war, it was surely to have been expected that we should have been left to retain the advantage of a pacific policy.

If there are men who hope to gratify their ambition, their avarice, or their vengeance, by adding this country to the league of northern powers, in the fantastic purpose of an extension of neutral rights, the great body of the people will hardly, we imagine, see in this project benefits sufficiently solid and durable to counterbalance the certain sacrifices of present advantages, and the certain sufferings of positive evils inseparable from a state of war.

Let us now attend to some other parts of this extraordinary address.

You are told, that there are many in the bosom of our coun-

try, who have long aimed at unequal privileges, and who have too well succeeded; by arrogating to themselves the right to be considered as the only friends of the Constitution, the guardians of order and religion, by the lavish abuse of their opponents, and by representing opposition to particular plans of administration, as hostility to the government itself.

What is meant by this aiming at unequal privileges?

If we are to judge of the end by the means stated to have been used, the charge amounts to this, that the federalists have sought to retain in their own hands, by the suffrages of the people, the exercise of the powers of the government.

Admitting the charge to be true, have not the anti-federalists pursued exactly the same course? Have they not labored incessantly to monopolize the power of our National and State governments? Whenever they have had it, have they not strained every nerve to keep it? Why is it a greater crime in the federalists than in their rivals to aim at an ascendant in the councils of our country?

It is true, as alleged, that the federalists insisted upon their superior claim to be considered as the friends of our Constitution, and have imputed to their adversaries improper and dangerous designs; but it is equally true, that these have asserted a similar claim, have advanced the pretension of being the only republicans and patriots, have charged their opponents with being in league with Great Britain to establish monarchy, have imputed to men of unblemished characters for probity in high public offices, corruption and peculation, and have persisted in the foul charge after its falsity had been ascertained by solemn public inquiry; and in their wanton and distempered rage for calumny have not scrupled to brand even a Washington as a *tyrant*, a *conspirator*, a *peculator*.

It is also true, that the federalists have represented the leaders of the other party as hostile to our national Constitution; but it is not true that it was because they have been unfriendly to *particular plans* of its administration.

It is because, as a party, and with few exceptions, they were violent opposers of the adoption of the Constitution itself; predict-

ed from it every possible evil, and painted it in the blackest colors, as a monster of political deformity.

It is because the amendments subsequently made, meeting scarcely any of the important objections which were urged, leaving the structure of the government, and the mass and distribution of its powers where they were, are too insignificant to be with any sensible man a reason for being reconciled to the system if he thought it originally bad.

It is because they have opposed not *particular plans* of the administration, but the general course of it, and almost all the measures of material consequence, and this too, not under one man or set of men, but under all the successions of men.

It is because, as there have been no alterations of the Constitution sufficient to change the opinion of its merits, and as the practice under it has met with the severest reprobation of the party, there is no circumstance from which to infer that they can really have been reconciled to it.

It is because the newspapers under their direction have from time to time continued to decry the Constitution itself.

It is because they have openly avowed their attachment to the excessive principles of the French revolution, and to leading features in the crude forms of government which have appeared only to disappear; utterly inconsistent with the sober maxims upon which our federal edifice was reared, and with essential parts in its structure. As specimens of this, it is sufficient to observe that they have approved the unity of the legislative power in one branch, and have been loud in their praises of an executive directory—that five-headed monster of faction and anarchy.

It is because they have repeatedly shown, and in their present address again show, that they contemplate innovations in our public affairs, which, without doubt, would disgrace and prostrate the government.

On these various and strong grounds have the federalists imputed to their opponents disaffection to the national Constitution. As yet they have no reason to retract the charge. To future proofs of repentance and reconciliation must an exculpation be referred. The anti-federalists have acquired the administra-

tion of the national government. Let them show by a wise and virtuous management that they are its friends; and they shall then have all the credit of so happy a reformation; but till then their assertions cannot be received as proofs.

And if the views which the signers of the address now boldly avow should unfortunately be those which should regulate the future administration of the government, the tokens of their amity would be as pernicious as could possibly be the tokens of their most deadly hatred.

They enumerate, as the crimes of the federalists, the funding system, the national debt, the taxes which constitute the public revenue, the British treaty, the federal city, the mint, a mausoleum, the sedition law, and a standing army; and they tell us in plain terms that these are "abuses no longer to be suffered."

Let it be observed in the first place, that these crying sins of our government are not to be placed exclusively to the account of the federalists; that for some of them the other party are chiefly responsible, and that in others they have participated.

As to the *federal city*, it is not to be denied that this was a favorite of the illustrious Washington. But it is no less certain, that it was warmly patronized by Mr. Jefferson, Mr. Madison, and the great majority of the members, who at the time composed the opposition in Congress, and who are now influential in the anti-federal party. It is also certain that the measure has never been a favorite of a majority of the federal party.

As to the *Mint*, it was not at all a measure of party. With slight diversities of opinion about some of the details, it was approved by both parties.

As to the *Mausoleum*, it has not taken place at all. The bill for erecting it, was lost in the Senate, where the federalists have a decided majority; and, instead of it, an appropriation of fifty thousand dollars was made for erecting an equestrian statue, *agreeably to a resolution of Congress, passed under the old confederation.* Is there an American, who would refuse this memorial of gratitude to the man, who is the boast of his country, the honor of his age?

As to the *Funding System*, it was thus far a measure of both parties, that both agreed there should be a *Funding System*. In the formation of it the chief points of difference were, 1st, a discrimination between original holders and transferees of the public debt; 2d, a provision for the general debt of the Union, leaving to each State to make separate provision for its particular debt.

Happily for our country, by the rejection of the first, which would have been an express violation of contracts, the faith of the government was preserved, its credit maintained and established.

Happily for our country, by not pursuing the last, unity, simplicity, and energy were secured to our fiscal system. The entanglements of fourteen conflicting systems of finance were avoided. The same mass of debt was included in one general provision, instead of being referred to fourteen separate provisions—more comprehensive justice was done, the States which had made extraordinary exertions for the support of the common cause, were relieved from the unequal pressure of burthens which must have crushed them, and the people were saved from the immense difference of expense between a collection of the necessary revenues by one set of officers or by fourteen different sets.

The truth, then, fellow-citizens, is this:—Both parties agreed that there should be a *funding* system; and the particular plan which prevailed was most agreeable to the contract of the government, most conducive to general and equal justice among the States and individuals, to order and efficiency in the finances—to economy in the collection.

Ought not these ideas to have governed? What is meant by holding up the funding system as an abuse no longer to be tolerated?

What is this funding system? It is nothing more nor less than the *pledging of adequate funds or revenues for paying the interest and for the gradual redemption of the principal* of that very debt which was the sacred price of independence. The country being unable to pay off the principal, what better could have been done?

It is recollected, that long before our revolution, most of the States had their funding systems. They emitted their paper money, which is only another phrase for certificates of debt; and they pledged funds for its redemption, which is but another phrase for *funding* it. What, then, is there so terrible in the idea of a funding system? Those who may have been accustomed under some of the State governments to gamble in the floating paper, and when they had monopolized a good quantity of it among themselves at low prices, to make partial legislative provisions for the payment of the particular kinds, would very naturally be displeased with a fixed and permanent system, which would give to the evidences of debt a stable value, and lop off the opportunities for gambling speculations; but men who are sensible of the pernicious tendency of such a state of things, will rejoice in a plan which was designed to produce, and *has produced* a contrary result.

What have been the effects of this system? An extension of commerce and manufactures, the rapid growth of our cities and towns, the consequent prosperity of agriculture, and the advancement of the farming interest. All this was effected by giving life and activity to a capital in the public obligations, which was before dead, and by converting it into a powerful instrument of mercantile and other industrious enterprise.

We make these assertions boldly, because the fact is exemplified by experience, and is obvious to all discerning men. Our opponents in their hearts know it to be so.

As to the public debt; the great mass of it was not created by the federalists peculiarly. It was contracted by all who were engaged in our councils during our revolutionary war. The federalists have only had a principal agency in providing for it. No man can impute that to them as a crime who is not ready to avow the fraudulent and base doctrine, that it is wiser and better to cheat, than to pay the creditors of a nation.

It is a fact certain and notorious, that under the administration of the first Secretary of the Treasury, ample provision was made, not only for paying the interest of this debt, but for extinguishing the principal in a moderate term of years.

But it is alleged that this debt has been increased, and is increasing.

On this point we know that malcontent individuals make the assertion and exhibit statements intended to prove it. But this we also know, that a Committee of the House of Representatives, particularly charged with the inquiry, have stated and reported the contrary; and we think that more credit is due to their representation than to that of individuals, especially as nothing is easier than in a matter of this sort to make plausible statements, which, though utterly false, cannot be detected except by those who possess all the materials of a complex calculation, who are qualified, and who will take the pains to make it.

We know likewise that extraordinary events have compelled our government to extraordinary expenditures—an Indian war, for some time disastrous, but terminated on principles likely to give durable tranquillity to our frontier; two insurrections fomented by the opposition to the government; the hostilities of a foreign power, encouraged by the undissembled sympathies of the same opposition, which obliged the government to arm for defence and security. These things have retarded the success of the efficacious measures which have been adopted for the discharge of our debt; measures which, with a peaceable and orderly course of things, accelerated by the rapid growth of our country, are sufficient in a few years, without any new expedient, to exonerate it from the whole of its present debt.

These, fellow-citizens, are serious truths, well known to most of our opponents, but what they shamefully endeavor to disfigure and disguise.

As to *Taxes*, they are evidently inseparable from government. It is impossible without them to pay the debts of the nation, to protect it from foreign danger, or to secure individuals from lawless violence and rapine. It is always easy to assert that they are heavier than they ought to be, always difficult to refute the assertion, which cannot ever be attempted without a critical review of the whole course of public measures. This gives an immense advantage to those who make a trade of complaint and censure.

But, fellow-citizens, it is in our power to state to you in relation to this subject and upon good information, one material fact.

There is, perhaps, no item in the catalogue of our taxes which has been more unpopular than that which is called the *Direct Tax*.

This tax may emphatically be placed to the account of the opposite party; it was always insisted upon by them as preferable to taxes of the indirect kind. And it is a truth capable of full proof, that *Mr. Madison*, second in the confidence of the anti-federal party, the confidential friend of *Mr. Jefferson*, and now Secretary of State by his nomination, was the proposer of this tax. This was done in a Committee of the last House of Representatives, of which he was a member, was approved by that Committee, and referred to the late Secretary of the Treasury, Mr. Wolcott, with *instructions* to prepare a plan as to the *mode*. Let it be added, that it was a principle of the federal party, never to resort to this species of tax but in time of war or hostility with a foreign power; that it was in such a time when they did resort to it, and that the occasion ceasing by the prospect of an accommodation, it has been resolved by them not to renew the tax.

As to the *British treaty*, it is sufficient to remind you of the extravagant predictions of evil persons of its ratification, and to ask you in what have they been realized? You have seen our peace preserved, you have seen our western posts surrendered, our commerce proceed with success in its wonted channels, and our agriculture flourish to the extent of every reasonable wish; and you have been witnesses to none of the mischiefs which were foretold. You will, then, conclude with us that the clamors against this treaty are the mere ebullitions of ignorance, of prejudice, and of faction.

As to the *Sedition Law*, we refer you to the debates in Congress for the motives and nature of it. More would prolong too much this reply, already longer than we could wish.

We will barely say that the most essential object of this Act is to declare the Courts of the United States competent to the

cognizance of those slanders against the principal officers and departments of the federal government, which at common law are punishable as libels; with the liberal and important mitigation of allowing the truth of an accusation to be given in evidence in exoneration of the accuser. What do you see in this to merit the execrations which have been bestowed on the measure?

As to a *standing army*, there is none, except four small regiments of infantry, insufficient for the service of guards in the numerous posts of our immense frontiers stretching from Niagara to the borders of Florida, and two regiments of artillery, which occupy in the same capacity the numerous fortifications along our widely extended sea-coast. What is there in this to affright or disgust? If these corps are to be abolished, substitutes must be found in the militia. If the experiment shall be made, it is easy to foretell that it will prove not a measure of economy, but a heavy bill of additional cost, and like all other visionary schemes will be productive only of repentance and a return to a plan injudiciously renounced.

This exposition of the measures which have been represented to you as abuses *no longer to be suffered* (mark the strength of the phrase) will, we trust, serve to satisfy you of the violence and absurdity of those crude notions which govern our opposers, if we believe them to be sincere. Happily for our country, however, there has just beamed a ray of hope that these violent and absurd notions will not form the rule of conduct of the person whom the party have recently elevated to the head of our national affairs.

In the speech of the new President upon assuming the exercise of his office, we find among the articles of his creed,—"the honest *payment of our* DEBT, *and sacred preservation of the* PUBLIC FAITH."

The funding system, the national debt, the British treaty, are not therefore in his conception abuses, which, if no longer to be tolerated, would be of course to be abolished.

But we think ourselves warranted to derive from the same source, a condemnation still more extensive of the opinions of our adversaries. The speech characterizes our present govern-

ment "as a republican in the *full tide* of successful *experiment*." Success in the *experiment* of a government, is success in the *practice* of it, and this is but another phrase for an administration, in the main, wise and good. That administration has been hitherto in the hands of the federalists.

Here then, fellow-citizens, is an open and solemn protest against the principles and opinions of our opponents, from a quarter which as yet they dare not arraign.

In referring to this speech, we think it proper to make a public declaration of our approbation of its contents. We view it as virtually a candid retraction of past misapprehensions, and a pledge to the community, that the new President will not lend himself to dangerous innovations, but in essential points will tread in the steps of his predecessors.

In doing this, he prudently anticipates the loss of a great portion of that favor which has elevated him to his present station. Doubtless, it is a just foresight. Adhering to the professions he has made, it will not be long before the body of the anti-federalists will raise their croaking and ill-omened voices against him. But in the talents, the patriotism, and the firmness of the federalists, he will find more than an equivalent for all that he shall lose.

All those of whatever party who may desire to support the moderate views exhibited in the Presidential Speech, will unite against the violent projects of the men who have addressed you in favor of Mr. Clinton, and against a candidate, who, in all past experience, has evinced that he is likely to be a fit instrument of these projects.

Fellow-citizens, we beseech you to consult your *experience* and not listen to tales of evil, which exist only in the language, not even in the imaginations of those who deal them out. This experience will tell you, that our opposers have been uniformly mistaken in their views of our Constitution, of its administration, in all the judgments which they have pronounced of our public affairs; and consequently, that they are unfaithful or incapable advisers. It will teach you that you have eminently prospered under the system of public measures pursued and supported by

the federalists. In vain are you told that you owe your prosperity to your own industry, and to the blessings of Providence. To the latter, doubtless, you are primarily indebted. You owe to it, among other benefits, the Constitution you enjoy, and the wise administration of it by virtuous men as its instruments. You are likewise indebted to your own industry. But has not your industry found aliment and incitement in the salutary operation of your government—in the preservation of order at home—in the cultivation of peace abroad—in the invigoration of confidence in pecuniary dealings—in the increased energies of credit and commerce—in the extension of enterprise, ever incident to a good government, well administered? Remember what your situation was immediately before the establishment of the present Constitution. Were you then deficient in industry more than now? If not, why were you not equally prosperous? Plainly, because your industry had not at that time the vivifying influences of an efficient and well conducted government.

There is one more particular in the address which we cannot pass over in silence, though, to avoid being tedious, we must do little more than mention it. It is a comparison between the administration of the former and present governors of this State, on the point of economy, accompanied with the observation, that the former had shown an anxious solicitude to exempt you from taxation.

The answer to this is, that under the administration of Mr. Clinton, the State possessed large resources, which were the substitute for taxation—the duties of impost, the proceeds of confiscated property, and immense tracts of new land, which, if they had been providently disposed of, would have long deferred the necessity of taxation. That this was not done, Mr. Clinton, as one of the commissioners of the land office, is in a principal degree responsible.

Under the administration of Mr. Jay, the natural increase of the State has unavoidably augmented the expense of the government, and the appropriations of large sums, in most of which all parties have concurred, to a variety of objects of public utility and necessity, have so far diminished the funds of the State, as in the opinion of all parties to have required a resort to taxes.

The principal of these objects have been: 1. The erection of fortifications, and the purchase of cannon, arms, and other warlike implements for the purpose of defence. 2. The building and maintenance of the State prisons, in the laudable experiment of an amelioration of our penal code. 3. The purchase from Indians of lands which, though resold, have not yet been productive of revenue. 4. The payment of dower to the widows of persons whose estates have been confiscated. 5. Large appropriations for the benefit of common schools, roads, and bridges. 6. The erection of an arsenal and public offices in the city of Albany.

Hence it is evident that the difference which has been remarked to you in respect to taxation, has proceeded from a difference of circumstances, not from the superior providence or economy of the former, or from the improvidence or profusion of the existing administration. Our opponents may be challenged to bring home to Mr. Jay the proofs of prodigality, and they may be told that the purity and integrity of his conduct in relation to the public property, have never for a moment been drawn into question.

We forbear to canvass minutely the personalities in which our adversaries have indulged. 'Tis enough for us, that they acknowledge our candidate to possess the good qualities which we have ascribed to him. If he has inherited a large estate, 'tis certainly no crime.

'Tis to his honor that his benevolence is as large as his estate. Let his numerous tenants be his witnesses:—attached as they are to him, not by the ties of dependence (for the greater part of them hold their lands in fee simple and upon easy rents), but by the ties of affection, by those gentle and precious cords which link gratitude to kindness. Let the many indigent and distressed who have been gladdened by the benign influence of his bounty, be his witnesses. And let every reflecting man well consider, whether the people are likely to suffer because the ample fortune of a virtuous and generous Chief Magistrate places him beyond the temptation of a job, for the accumulation of wealth.

We shall not inquire how ample may be the domains, how productive the revenues, how numerous the dependents of Mr.

Clinton, nor how his ample domains may have been acquired. 'Tis enough for us to say, that if Mr Van Rensselaer is *rich*, Mr. Clinton is not poor, and that it is at least as innocent in the former to have been born to opulence, as in the latter to have attained to it by means of the advantages of the first office of the State, long, very long enjoyed, for three years at least too long, because, by an unlawful tenure contrary to a known majority of suffrages.

We shall not examine how likely it is that a man considerably past the meridian of life, and debilitated by infirmities of body, will be a more useful and efficient governor, and more independent of the aid of friends and relations, than a man of acknowledged good sense, of mature years, in the full vigor of life, and in the full energy of his faculties.

We shall not discuss how far it is probable that the radical antipathy of Mr. Clinton to the vital parts of our National Constitution, has given way to the little formal amendments which have since been adopted. We are glad to be assured that it has. It gives us pleasure to see proselytes to the truth; nor shall we be over curious to inquire how men get right if we can but discover that they are right. If happily the possession of the power of our once detested government, shall be a talisman to work the conversion of all its enemies, we shall be ready to rejoice that good has come out of evil.

But we dare not too far indulge this pleasing hope. We know that the adverse party has its *Dantons*, its Robespierres, as well as its Brissots, and its Rolands; and we look forward to the time when the sects of the former will endeavor to confound the latter and their adherents, together with the federalists, in promiscuous ruin.

In regard to these sects, which compose the pith and essence of the anti-federal party, we believe it to be true that the contest between us, is indeed a war of principles,—a war between tyranny and liberty, but not between monarchy and republicanism. It is a contest between the tyranny of Jacobinism, which confounds and levels every thing, and the mild reign of rational liberty, which rests on the basis of an efficient and well balanced

government, and through the medium of stable laws, shelters and protects the life, the reputation, the civil and religious rights of every member of the community.

'Tis against these sects that all good men should form an indissoluble league. To resist and frustrate their machinations is alike essential to every prudent and faithful administration of our government, whoever may be the depositories of the power.

EXAMINATION OF JEFFERSON'S MESSAGE TO CONGRESS OF DECEMBER 7, 1801.

NO I.

December 17, 1801.

Instead of delivering a *speech* to the Houses of Congress, at the opening of the present session, the President has thought fit to transmit a *Message*. Whether this has proceeded from pride or from humility, from a temperate love of reform, or from a wild spirit of innovation, is submitted to the conjectures of the curious. A single observation shall be indulged—since all agree, that he is unlike his predecessors in essential points, it is a mark of consistency to differ from them in matters of form.

Whoever considers the temper of the day, must be satisfied that this Message is likely to add much to the popularity of our chief magistrate. It conforms, as far as would be tolerated at this early stage of our progress in political perfection, to the bewitching tenets of that illuminated doctrine, which promises man, ere long, an emancipation from the burdens and restraints of government; giving a foretaste of that pure felicity which the apostles of this doctrine have predicted. After having, with infinite pains and assiduity, formed the public taste for this species of fare, it is certainly right, in those whom the

people have chosen for their caterers, to be attentive to the gratification of that taste. And should the viands, which they may offer, prove baneful poisons instead of wholesome aliments, the justification is both plain and easy—*Good patriots must at all events please the people.* But those whose patriotism is of the old school, who differ so widely from the disciples of the new creed, that they would rather risk incurring the displeasure of the people by speaking unpalatable truths, than betray their interest by fostering their prejudices, will never be deterred by an impure tide of popular opinion from honestly pointing out the mistakes or the faults of weak or wicked men, who may have been selected as guardians of the public weal.

The Message of the President, by whatever motives it may have been dictated, is a performance which ought to alarm all who are anxious for the safety of our government, for the respectability and welfare of our nation. It makes, or aims at making, a most prodigal sacrifice of constitutional energy, of sound principle, and of public interest, to the popularity of one man.

The first thing in it, which excites our surprise, is the very extraordinary position, that though *Tripoli had declared war in form* against the United States, and had enforced it by actual hostility, yet that there was not power, for want of *the sanction of Congress*, to capture and detain her cruisers with their crews.

When the newspapers informed us that one of these cruisers, after being subdued in a bloody conflict, had been liberated and permitted quietly to return home, the imagination was perplexed to divine the reason. The conjecture naturally was, that pursuing a policy too refined perhaps for barbarians, it was intended, by that measure, to give the enemy a strong impression of our magnanimity and humanity. No one dreamt of a scruple as to the *right* to seize and detain the armed vessel of an open and avowed foe, vanquished in battle. The enigma is now solved, and we are presented with one of the most singular paradoxes ever advanced by a man claiming the character of a statesman. When analyzed, it amounts to nothing less than this, that *between* two nations there may exist a state of complete war on the one side—of peace on the other.

War, of itself, gives to the parties a mutual right to kill in battle, and to capture the persons and property of each other. This is a rule of natural law; a necessary and inevitable consequence of the state of war. This state between two nations is completely produced by the act of one—it requires no concurrent act of the other. It is impossible to conceive the idea, that one nation can be in full war with another, and this other not in the same state with respect to its adversary. The moment that two nations are, in an absolute sense, at war, the public force of each may exercise every act of hostility, which the general laws of war authorize, against the persons and property of the other. As it respects this conclusion, the distinction between offensive and defensive war makes no difference. That distinction is only material to discriminate the aggressing nation from that which defends itself against attack.—The war is offensive on the part of the state which makes it; on the opposite side it is defensive: but the rights of both, as to the measure of hostility, are equal.

It will be readily allowed, that the constitution of a particular country may limit the organ, charged with the direction of the public force, in the use or application of that force, even in time of actual war: but nothing short of the strongest negative words, of the most express prohibitions, can be admitted to restrain that organ from so employing it, as to derive the fruits of actual victory, by making prisoners of the persons and detaining the property of a vanquished enemy. Our Constitution, happily, is not chargeable with so great an absurdity. The framers of it would have blushed at a provision, so repugnant to good sense, so inconsistent with national safety and inconvenience. That instrument has only provided affirmatively, that, "The Congress shall have power to declare War;" the plain meaning of which is, that it is the peculiar and exclusive province of Congress, *when the nation is at peace* to change that state into a state of war; whether from calculations of policy, or from provocations, or injuries received: in other words, it belongs to Congress only, *to go to War*. But when a foreign nation declares, or openly and avowedly makes war upon the United

States, they are then by the very fact *already at war*, and any declaration on the part of Congress is nugatory; it is at least unnecessary. This inference is clear in principle, and has the sanction of established practice. It is clear in principle, because it is self-evident, that a declaration by one nation against another, produces at once a complete state of war between both; and that no declaration on the other side can at all vary their relative situation; and in practice, it is well known, that nothing is more common than when war is declared by one party, to prosecute mutual hostilities without a declaration by the other.

The doctrine of the Message includes the strange absurdity, that without a declaration of war by Congress, our public force may destroy the life, but may not restrain the liberty, or seize the property of an enemy. This was exemplified in the very instance of the Tripolitan corsair. A number of her crew were slaughtered in the combat, and after she was subdued, she was set free with the remainder. But it may perhaps be said, that she was the assailant, and that resistance was an act of mere defence and self-preservation. Let us then pursue the matter a step further. Our ships had blockaded the Tripolitan Admiral in the Bay of Gibraltar; suppose he had attempted to make his way out, without first firing upon them; if permitted to do it, the blockade was a farce; if hindered by force, this would have amounted to more than a mere act of defence: and if a combat had ensued, we should then have seen a perfect illustration of the unintelligible right, to take the life but not to abridge the liberty, or capture the property of an enemy. Let us suppose an invasion of our territory, previous to a declaration of war by Congress. The principle avowed in the Message, would authorize our troops to kill those of the invader, if they should come within the reach of their bayonets, perhaps to drive them into the sea, and drown them; but not to disable them from doing harm, by the milder process of making them prisoners, and sending them into confinement. Perhaps it may be replied, that the same end would be answered by disarming, and leaving them to starve. The merit of such an argument would be complete by adding, that should they not be famished, before the arrival of their ships with a

fresh supply of arms, we might then, if able, disarm them a second time, and send them on board their fleet, to return safely home.

The inconvenience of the doctrine in practice, is not less palpable than its folly in theory. In every case it presents a most unequal warfare. In the instance which has occurred, the vanquished barbarian got off with the loss of his guns. Had he been victorious, those Americans, whose lives might have been spared, would have been doomed to wear out a miserable existence in slavery and chains. Substantial benefits would have rewarded his success: while on our side, life, liberty, and property, were put in jeopardy for an empty triumph. This, however, presents a partial inconvenience—cases may arise in which evils of a more serious and comprehensive nature would be the fruits of this visionary and fantastical principle.—Suppose that, in the recess of Congress, a foreign maritime power should unexpectedly declare war against the United States, and send a fleet and army to seize Rhode Island, in order from thence to annoy our trade and our sea-port towns. Till the Congress should assemble and declare war, which would require time, our ships might, according to the hypothesis of the message, be sent by the President to fight those of the enemy as often as they should be attacked, but not to capture and detain them: if beaten, both vessels and crews would be lost to the United States: if successful, they could only disarm those they had overcome, and must suffer them to return to the place of common rendezvous, there to equip anew, for the purpose of resuming their depredations on our towns and our trade.

Who could restrain the laugh of derision at positions so preposterous, were it not for the reflection that in the first magistrate of our country, they cast a blemish on our national character? What will the world think of the fold when such is the shepherd?

Lucius Crassus.

NO. II.

December 21, 1801.

The next most prominent feature in the message, is the proposal to abandon at once, all the internal revenue of the country. The motives avowed for this astonishing scheme are, that "there is *reasonable ground of confidence* that this part of the revenue may now be safely dispensed with—that the remaining sources will be sufficient to provide for the support of government, to *pay the interest* of the public debt, and to *discharge the principal* in shorter periods than the *laws* or the *general expectation* had contemplated—and that though wars and untoward events might change this prospect of things, and call for expenses which the *impost* could not meet—yet that sound principles would not justify our taxing the industry of our fellow-citizens to *accumulate treasure* for wars to happen we know not when, and which might not perhaps happen but from the *temptations offered* by that treasure."

If we allow these to be more than ostensible motives, we shall be driven to ascribe this conduct to a deficiency of intellect, and to an ignorance of our financial arrangements, greater than could have been suspected; if but ostensible, it is then impossible to trace the suggestion to any other source than the culpable desire of gaining or securing popularity at an immediate expense of public utility, equivalent, on a pecuniary scale, to a million* of dollars annually; and at the greater expense of a very serious invasion of our system of public credit.

That these at least are the certain consequences of the measure, shall be demonstrated by arguments, which are believed to be unanswerable.

To do this the more effectually, it is necessary to premise, that some of the revenues now proposed to be relinquished, are, with every solemnity of law, pledged for paying the interest and

* This is taken as a round number. The present nett product, including the duties on stamps, seems to be between eight and nine hundred thousand. Very speedily, by the natural progress of the country, they would amount to a million, and soon after exceed it. A million therefore is a moderate ratio.

redeeming the principal of our public debt, foreign and domestic. As to the interest, and such parts of the principal as by the original constitution of the debt are payable by annual instalments, the appropriation is absolute. As to the residue, it is qualified. On the 3d of March, 1795, was passed an act of Congress which forms a main pillar in the fabric of our public debt—which, maturing and perfecting the establishment of a *sinking fund*, endeavors, with peculiar solicitude, to render it adequate, effectual and inviolable: by the 8th section of this act it is provided, "That *all surpluses* of the revenue, which *shall remain at the end* of any year, and which at the next session of Congress shall not be otherwise appropriated or reserved by law, shall *ipso facto* become a part of the "*Sinking Fund.*" This fund, by other provisions of the same act, is *vested* in commissioners *in trust*, to be applied to the redemption of the debt, by reimbursement or by purchase, until the whole shall be extinguished: and the faith of the United States is expressly engaged, that the moneys which are to constitute the fund, shall inviolably remain so appropriated and vested, until the redemption of the debt shall be completely effected.

The simple statement of these provisions goes far to confirm the character which we have given to the proposition. But a distinct examination of the reasons by which it is supported, will, when taken in connection with those provisions, place beyond doubt its absurd and pernicious tendency.

The first inducement offered for relinquishing the internal revenue, is a *reasonable ground of confidence* that it may safely be dispensed with.

When it is considered that we are in the very crisis of an important change of situation; passing from a state in which neutrality had procured to our commerce, and to the revenues depending on it, a great artificial increase—with good reason to look for a diminution, and without satisfactory *data* to enable us to fix the extent of this diminution: can any thing be more rash, more empirical, than voluntarily to abandon a valuable and growing branch of income of which we are already in possession? Can it be said, that merely "*a reasonable ground* of confidence,"

is a sufficient warrant for so important a surrender? Surely we ought to have been told that there was at least a moral certainty of the fact. But even this would not have been deemed enough by a prudent statesman. Nothing less than *experimental certainty* ought to have been relied upon.—There was no pressure of circumstances making it proper to precipitate the measure.—It would have been ridiculous to pretend that the burden is so heavy, as to demand immediate relief; and without this incentive to relinquishment, experience ought undoubtedly to have been taken as the only fit and sure guide.

Not only is it problematical what the present duties on imports will for succeeding years produce; but it is in a degree questionable, whether it may not be found necessary to reduce the rates. That they are now high, when compared with the commercial capital of our country, is not to be denied, and whether they may not be found too high for a beneficial course of our trade, is yet to be decided by experiment. The latter augmentations of the rates of duty were made at times and under circumstances in the situations of this and of other countries, which forbid us to regard past experience as conclusive on the point.

Should it be said in answer, that the revenues can hereafter be renewed, if on trial it shall be found that they have been prematurely abandoned, the decisive reply is, that this is to invert the natural order of just reasoning. Were it now the question, whether such revenues should be created, in anticipation of a possible deficiency, the correct answer would be, let experiment first ascertain the necessity: as they already exist, on a question to abolish them, the answer equally ought to be, let experience first show them to be unnecessary.

But how can they be unnecessary? Let us grant that the remaining sources will be equal to the purposes enumerated in the message, does it follow that it will not still be wise to retain the internal revenue? Is it not desirable that government should have it in its power to discharge the debt faster than may have been contemplated? Is not this a felicity in our situation which ought to be improved? A precious item in the public fortune which ought not rashly to be squandered? But it is not even

true that the laws have exclusively contemplated a definite period for the ultimate redemption of the entire debt. They have only made a determinate provision for its extinguishment, at all events, within a given term of years: but, anxious to shorten the period, they, in the clause which has been quoted respecting the surpluses of revenue, have made an auxiliary provision for the purpose of abridging that term. The message, while it goes to impair the efficacy of the principal provision, proposes formally to renounce the auxiliary, and thus to disappoint the provident care of the laws to accelerate the discharge of the debt.

How is this reconcilable with the wanton and unjust clamors heretofore vented against those who projected and established our present system of public credit; charging them with a design to perpetuate the debt, under the pretext that *a public debt was a public blessing?* It is not to be forgotten, that in these clamors Mr. Jefferson liberally participated! Now, it seems, the tone is entirely changed. The past administrations, who had so long been calumniated by the imputation of that pernicious design, are of a sudden discovered to have done too much for the speedy discharge of the debt, and its duration is to be prolonged, by throwing away a part of the fund destined for its prompt redemption. Wonderful union of consistency and wisdom!

Before we yield our approbation to the proposal, we ought to have a guarantee for the continuance of our peace, long enough to give effect to the leisurely operation of that residue of the fund which it is intended to retain: else war, which never fails to bring with it an accumulation of debt, may intervene, and we may then rapidly hasten to that period when the exigencies of government may render it necessary to appropriate too large a portion of the *earnings of labor*. To guard against so unfortunate a result, towards which there is always too great a tendency in the affairs of nations, our past administrations have evinced a deep foresight, and exercised a truly patriotic care. Unhappy will it be, if any succeeding projector shall be permitted to frustrate their salutary plan.

It has been seen, that the message anticipates and attempts to answer objections to the dereliction of revenue: it is said, that

"sound principles will not permit us to tax the industry of our citizens to accumulate treasure for wars to happen we know not when, and which might not perhaps happen but for the temptations offered by that treasure." Unless, however, the *accumulation of treasure* be the necessary consequence of retaining the revenue, this argument is evidently futile. But the President had only to open our statute book to learn, that this consequence is chimerical. All future surpluses of revenue, being already eventually appropriated to the discharge of the public debt, it follows that till the whole debt shall have been extinguished, there could be no *accumulation of treasure*—no spoil from that source to tempt the rapacity of a greedy invader. Here we fix the charge of ignorance of our financial arrangements: to which there can be no alternative but a deliberate design to delude the people. Between the two, let the worshippers of the idol make their option.

LUCIUS CRASSUS.

NO. III.

December 24th, 1801.

Had our laws been less provident than they have been, yet must it give us a very humble idea of the talents of our President as a statesman, to find him embarrassed between an absolute abandonment of revenue, and an inconvenient accumulation of treasure. Pursuing the doctrine professed by his *sect*, that our public debt is a national *curse*, which cannot too promptly be removed, and adhering to the assurance which he has virtually given,* that a sponge, *the favorite instrument*, shall not be employed for the purpose, how has it happened that he should have overlooked the simple and obvious expedient of using the supposed excess of income as a remedy for so great a mischief?

* One of the essential principles of government is, "*the honest payment of our debts and the sacred preservation of the public faith.*"—INAUGURAL SPEECH.

After all we have heard in times past, it would ill become either the head, or any member, of the *orthodox sect* to contend, that a too rapid reimbursement of the debt might be attended with evils. In courtesy, however, this shall be supposed to be urged by some new convert, who has not entirely shaken off the prejudices of former modes of thinking; and it shall be examined, whether this argument will afford a justification of the measure recommended.

It shall not be denied, that the immediate payment of our whole debt, if practicable, would be likely to be injurious in various ways. It would, in the first instance, produce a money-plethora (if the phrase may be allowed), which experience has shown to be inauspicious to the energies, and especially to the morality and industry of a nation. The quick efflux of this money to pay a considerable part of the debt in the hands of foreigners, and to procure from abroad the means of gratifying an increased extravagance, would, after some time, substitute a too great vacuity to a too great fulness; leaving us to struggle with the bad habits incident to the latter state, and with the embarrassments of a defective circulation. To these, other reasons might be added, which, though equally just and solid, are omitted as being more liable to dispute.

Though an extreme case is here presented, the immediate reimbursement of the entire debt; yet it must be admitted, that the same considerations are applicable in a less degree to a summary, or very rapid repayment by large instalments. But the answer to all this is, that it would have been full time to adopt precautionary measures against evils from such a source, when experience had realized the danger. Till such time it is certainly the highest wisdom to continue the employment of a fund which is already provided, and without overburdening the people, for the all-important purpose of exonerating our nation from debt, and of placing it in a condition, with competent resources to meet future contingencies which may threaten its safety. On the other hand, is it not a mark of the highest improvidence and folly, to throw away an important part of this fund, on the mere speculation that it may possibly be superfluous?

But admitting it to be clearly ascertained, that the fund is greater than is requisite to extinguish the debt, with convenient celerity; does it follow that the excess, if retained, must be suffered to accumulate, and that no different method could have been found to employ it which would have been productive of adequate utility?

Whatever diversity of opinion there may be with regard to military and naval preparations, for the defence and security of the country, there are some things in which all well-informed and reflecting men unite. In order that upon the breaking out of a war there may be a sufficient supply of warlike implements, together with the means of speedily creating a navy;—arsenals, foundries, dock-yards, magazines (especially of materials for the construction and equipment of ships), are by all deemed eligible objects of public care. To provide for these objects upon a competent, though moderate scale, will be attended with expense so considerable, as to leave nothing to spare from the amount of our present income. To persons unacquainted with the subject, the quantities of several articles on hand may appear ample; but to good judges there is hardly any one class of supplies, which will not be thonght to require much augmentation. As far as a navy is concerned, the deficiency is palpable.

If dock-yards are to be established in earnest, they ought certainly to be well protected. For this purpose, fortifications of a substantial and durable nature, very different from the temporary shifts hitherto adopted, ought to be erected. And if the President will inquire into the cost of even these trifling constructions, in the instances where they have been managed with all practicable economy, he will become convinced that the erection of proper works would call for an expenditure forbidding the supposition of a superfluity of revenue.

In addition to objects of national security, there are many purposes of great public utility to which the revenues in question might be applied. The improvement of the communications between the different parts of our country is an object well worthy of the national purse, and one which would abundantly repay *to labor* the portion of its *earnings*, which may have been

borrowed for that purpose. To provide roads and bridges is within the direct purview of the Constitution. In many parts of the country, especially in the Western Territory, a matter in which the Atlantic States are equally interested, aqueducts and canals would also be fit subjects of pecuniary aid, from the general government. In France, England, and other parts of Europe, institutions exist supported by public contributions, which eminently promote agriculture and the arts; such institutions merit imitation by our government; they are of the number of those which directly and sensibly recompense *labor* for what it lends to their agency.

To suggestions of the last kind, the adepts of the new school have a ready answer: *Industry will succeed and prosper in proportion as it is left to the exertions of individual enterprise.* This favorite dogma, when taken as a general rule, is true; but as an exclusive one, it is false, and leads to error in the administration of public affairs. In matters of industry, human enterprise ought, doubtless, to be left free in the main; not fettered by too much regulation; but practical politicians know that it may be beneficially stimulated by prudent aids and encouragements on the part of the government. This is proved by numerous examples too tedious to be cited; examples which will be neglected only by indolent and temporizing rulers, who love to loll in the lap of epicurean ease, and seem to imagine that to govern well, is to amuse the wondering multitude with sagacious aphorisms and oracular sayings.

What has been observed, is sufficient to render it manifest, that, independent of the extinguishment of the debt, the revenues proposed to be yielded up, would find ample and very useful employment for a variety of public purposes. Already in possession of so valuable a resource; having surmounted the difficulties, which, from the opinions and habits of our citizens, obstruct, in this, more than in any other country, every new provision for adding to our public income; certainly without a colorable pretence of their being a grievous or undue pressure on the community—how foolish will it be to resign the boon, perhaps in a short time to be compelled again to resort to it;

and for that purpose to hazard a repetition of the obstacles which have been before encountered and overcome; obstacles which gave birth to one insurrection, and may give birth to another! Infatuated must be the councils from which so injurious a project has proceeded!

But admitting the position, that there is an excess of income which ought to be relinquished, still the proposal to surrender the *internal* revenue is impolitic. It ought to be carefully preserved, as not being exposed to the casualties, incident to our intercourse with foreign nations, and therefore the most certain. It ought to be preserved, as reaching to descriptions of persons who are not proportionably affected by the impost, and as tending, for this reason, to distribute the public burden more equitably. It ought to be preserved, because if revenue can really be spared, it is best to do it in such a manner as will conduce to the relief or advancement of our navigation and commerce. Rather let the tonnage duty on American vessels be abolished, and let the duties be lessened on some particular articles on which they may press with inconvenient weight. Let not the merchant be provoked to attempt to evade the duties, by the sentiment that his ease or interest is disregarded, and that his capital alone is to be clogged and incumbered by the demands of the Treasury.

But who and what are the merchants, when compared with the patriotic votaries of whisky in Pennsylvania and Virginia?

LUCIUS CRASSUS.

IV.

December 26, 1801.

It is matter of surprise to observe a proposition to diminish the revenue, associated with intimations which appear to con template war. The suggestions in the message respecting the Barbary States, plainly enough imply, that treaties are found to be too feeble cords to bind them; and that a resort to coercive means will probably be requisite to enforce a greater sense of

justice towards us. Accordingly, as a comment on this hint, we have seen a resolution brought into the House of Representatives, authorizing the President to take measures effectually to protect our commerce against those States. Believing it to be a sound position, that these predatory nations will never be brought to respect sufficiently the rights of this country, whether derived from nature or from compact, without first being made to feel its power; there is no disposition to condemn the efficacious employment of force. Yet, considering the maxims by which those states are governed, and the obstinacy which they have evinced upon other occasions, it is likely that a policy of this sort will be attended with considerable, and with no very temporary expense. This alone is conceived to be a conclusive reason against parting with any portion of our present income: nothing could be less advisable, at a moment when there is the prospect, if not the project of a general rupture with those powers.

Hitherto the proposal for sacrificing the internal revenue, has been tried almost wholly by the test of expediency;—it is time to put it to a severer test;—that of *right*. *Can the proposed abolition take effect without impairing the* PUBLIC FAITH?

This is a question of infinite moment to the character of our government—to the prosperity of our nation. If it is to be answered in the negative, it must be matter of profound regret, that a proposal which could give rise to it, should have come from the first magistrate of the United States.

It is hardly necessary to premise, by way of explanation, that *to pledge or appropriate* funds for a public debt, is, in effect, to *mortgage* them to the public creditors *for their security*. Retracing our financial system to its commencement, we find the impost and the excise on distilled spirits, repeatedly and positively pledged, first, for the payment and interest of the debt, next, for the reimbursement of certain instalments of the principal. It is true, the appropriation is qualified by the words, "so much as may be necessary," but the *public faith* is engaged in express terms, that *both the funds* shall *continue* to be levied and collected, until the whole debt shall be discharged; with the single re-

serve, that the government shall be at liberty to *substitute* other funds of *equal amount*. It follows that these *two items* of revenue constitute a *joint* fund for the security of the public creditor, co-extensive in duration with the existence of any portion of the debt: and it is to be inferred, that the government, contemplating the possibility of a deficiency in *one*, intended that the *other* should serve as an *auxiliary*, and that the *co-operation* of the *two* should effectually guard the creditor against the fluctuations and casualties to which *either singly* might be exposed. Anticipating, however, the possibility that the one or the other, in whole or in part, might in practice be found inconvenient, a right was reserved to *exchange* either for an *adequate* substitute. But it is conceived, that this does not imply the right to exchange *the one* for *the other*. The effect would be essentially different in the two cases: in the first there would always be *two funds*, aggregately of the same or similar force and value, to secure the creditor; in the last there would be *only one:* from being double, the security would become single.

This mode of reasoning is the only one, upon which the rights and the interests of the creditors can safely rest: it is plain and intelligible, and avoids the danger of erroneous speculations about the *separate sufficiency* of the respective funds. Admitting, however, for the sake of the argument, that this is too rigid a construction of the contract, and that when *one* of the *two* funds should have acquired a stable increase, which would render it equal to the purpose of the pledge, it might then be made to stand in the place of both: yet, surely, neither the purity of the public faith, nor the safety of the creditor, will endure the application of this principle to any other, than to an ascertained result. Neither, certainly, will tolerate, that merely a *reasonable ground of confidence* shall authorize so material an alteration in the essence of the security which protects the debt.

The foregoing reasoning as to the question of *right*, may be further elucidated by a particular provision in the act* which introduced the excise on distilled spirits. After a *permanent* ap-

* Passed March 3d, 1791.

propriation of the proceeds of the tax to the interest of the debt, it provides that the surplus, if any there shall be, at the end of each year *shall be* applied to the reduction of the principal; unless the surplus or any part of it should be required for public exigencies of the United States, and should be so appropriated by special "acts of Congress." While at this early period of our finances it was not thought expedient to appropriate this surplus *absolutely* to the *sinking fund*, it was contemplated that it should not be diverted, except for *public exigencies*. Gratuitously to relinquish it, is therefore contrary to the letter as well as to the spirit of the original institution of the fund. The like observations, though with less force, apply to the provision noticed in another number, respecting the surpluses of the revenue generally, which, as we have seen, are all appropriated to the sinking fund. At the session of Congress immediately succeeding any year in which such surpluses may accrue, they may be specially *appropriated* or *reserved* by law, for other purposes; but, if this be not done, they are then to go of course to the sinking fund. To *appropriate* or to *reserve*, plainly, can never mean to *relinquish*. The true meaning of the provision appears, therefore, to be, that though Congress, under the restriction expressed as to time, may *appropriate* or *reserve* these surpluses for other objects of the public service, yet if not wanted for such other objects, they shall continue to enure to the fund for the reduction of the debt, so long as, by the laws regulating their duration, they are continued to be levied.

Thus, on whatever side it is viewed, there is a temerity and a levity in the proposition which confounds and amazes. If, unhappily, it shall receive the sanction of Congress, there will remain nothing in principle of our system of public credit—nothing on which the confidence of the creditor can safely repose. The precedent of a fatal innovation will have been established, and its extension to a total annihilation of the security, would be a step not much more violent than that by which the inroad had commenced. But it is devoutly to be hoped, that the delirium of party spirit will not so far transport the *legislative* representatives of the nation, as to induce *them* to put the seal to a mea-

sure, as motiveless—as precipitate—as impolitic—as *faithless*—as could have been dictated, even by a deliberate hostility to the vital principles of our national credit. Peculiarly the guardians of the PUBLIC FAITH, and of the *public purse*, they surely will not consent to betray the one, and impoverish the other, through an abject and criminal complaisance.

It is a fact not unknown to himself, that abroad, as well as at home, a diffidence has been entertained of the opinions and views of the person now at the head of our government, with regard to our system of public credit. This undoubtedly ought to have been with him a strong reason for caution, especially at so early a stage of his administration, as to any step which might strengthen that diffidence, which might be in the least equivocal in its tendency. Nor ought it to have been overlooked, that the interest of the state, and a regard for his own reputation demanded this caution. The appearance of instability in the plans of a government, particularly respecting its finances, can never fail to make injurious impressions. To a government, the character of which has not yet been established by time, the example of sudden and questionable innovations, may be expected to be in the highest degree detrimental. Prudent men every where are apt to take the alarm at great changes not manifestly beneficial and proper—a disposition which has been much increased by the terrible events of the present revolutionary era. Yet, disregarding these salutary and obvious reflections, the President has ventured, in the very infancy of his administration, upon the bold and unjustifiable step of recommending to the legislative body, a renunciation of the whole *internal revenue* of the country; though the nation is at this moment incumbered with a considerable public debt; and though that very revenue is, by the existing laws, an *established fund* for its discharge.

What, then, are we to think of the ostentatious assurance in the Inaugural Speech as to the preservation of PUBLIC FAITH? Was it given merely to amuse with agreeable, but deceptive sounds? Is it possible that it could have been intended to conceal the insidious design of aiming a deadly blow at a system which was opposed in its origin, and has been calumniated in every stage of its progress?

Alas! how deplorable will it be, should it ever become proverbial, that a President of the United States, like the *Wierd Sisters* in Macbeth, "*Keeps his promise to the ear, but breaks it to the sense.*"

LUCIUS CRASSUS.

NO. V.

December 29, 1801.

In the rage for change, or under the stimulus of a deep-rooted animosity against the former administrations, or for the sake of gaining popular favor by a profuse display of extraordinary zeal for economy, even our judiciary system has not passed unassailed. The attack here is not so open as that on the revenue; but when we are told that the States individually have "*principal* care of our persons, our property and our reputation, constituting the great field of human concerns; and that therefore *we may well doubt whether our organization is not too complicated, too expensive;* whether offices and officers have not been multiplied unnecessarily, and sometimes injuriously to the service they were meant to promote;" when afterwards it is observed that "the judiciary system will, *of course,* present itself to the contemplation of Congress;" and when it appears that pains had been taken to form and communicate a numerical list of all the causes decided since the first establishment of the courts, in order that Congress might be able to judge of the proportion which the institution bears to the business—with all these indications, it is not to be misunderstood that the intention was unequivocally to recommend *material* alterations in the system.

No bad thermometer of the capacity of our Chief Magistrate for government is furnished by the rule which he offers for judging of the utility of the Federal Courts; namely, the exact *number* of causes which have been by them decided. There is hardly any stronger symptom of a pigmy mind, than a propen-

sity to allow greater weight to *secondary* than to *primary* considerations.

It ought, at least, to have been adverted to, that if this circumstance were a perfect criterion, it is yet too early to apply it, especially to the courts recently erected: and it might have merited reflection, that it would have been prudent to wait for a more advanced period of the presidential term, to ascertain what influence the great change which has lately happened in our *public functionaries* may have on the confidence, which in many parts of the Union has heretofore been reposed in the State Courts, so as to prevent a preference of those of the United States.

But, to enable us duly to appreciate the wisdom of the projected innovation, it is necessary to review the objects which were designed to be accomplished by the arrangement of the judiciary power, as it is seen in the Constitution, and to examine the organization which has been adopted, to give effect to those objects.

It is well known to all who were acquainted with the situation of our public affairs when the Constitution was framed, and it is to be inferred from the provisions of the instrument itself, that the objects contemplated, were, 1st. To provide a faithful and efficient organ for carrying into execution the laws of the United States, which otherwise would be a *dead letter*. 2d. To secure the fair interpretation and execution of our treaties with foreign nations. 3d. To maintain harmony between the individual States; not only by an independent and impartial mode of determining controversies between them, but by frustrating the effects of partial laws in any one, injurious to the rights of the citizens of another. 4th. To guard generally against invasions of property and right, by fraudulent and oppressive laws of particular States, enforced by their own tribunals. 5th. To guard the rights and conciliate the confidence of foreigners, by giving them the option of tribunals created by, and responsible to, the general government; which, having the immediate charge of our external relations, including the care of our national peace, might be expected to be more tenacious of such an administra-

tion of justice as would leave to the citizens of other countries no real cause of complaint. 6th. To protect reciprocally the rights and inspire mutually the confidence of the citizens of different States in their intercourse with each other, by enabling them to resort to tribunals so constituted, as to be essentially free from local bias or partiality. 7th. To give the citizens of each State a fair chance of impartial justice through the medium of those tribunals, in cases in which the titles to property might depend, on the conflicting grants of different States. These were the immensely important objects to be attained by the institution of an adequate judiciary power, in the government of the United States. Nor did its institution depend upon mere speculative opinion, though, indeed, even that would have been sufficient to indicate the expediency of the measure: but experience had actually, in a variety of ways, demonstrated its necessity.

The treaties of the United States had been infracted by State laws, put in execution by State judicatories. The rights of property had been invaded by the same means, in numerous instances, as well with respect to foreigners as to citizens; as well between citizens of different States as between citizens of the same State. There were many cases in which lands were held or claimed under adverse grants of different States, having rival pretensions; and in respect to which, the local tribunals, even if not fettered by the local laws, could hardly be expected to be impartial. In several of the States the courts were so constituted as not to afford sufficient assurance of a pure, enlightened, and independent administration of justice; an evil which in some of them still continues. From these different sources serious mischiefs had been felt. The interests of the United States, in their foreign concerns, had suffered; their reputation had been tarnished; their peace endangered; their mutual harmony had been disturbed or menaced; creditors in numerous instances had been ruined or very much injured: confidence in pecuniary transactions had been destroyed, and the springs of industry had been proportionably relaxed. To these circumstances, as much, perhaps, as any other that accompanied a defective social organization, are we to attribute that miserable and prostrate situation

of our affairs which, immediately before the establishment of our present National Constitution, filled every intelligent lover of his country with affliction and mortification. To the institution of a competent judiciary, little less than to any one provision in that Constitution, is to be ascribed the rapid and salutary renovation of our affairs, which succeeded.

The enumeration* of the component parts of the judicial power, in the Constitution, has an evident eye to the several objects which have been stated. And considering their vast magnitude, no sound politician will doubt that the principal question, with the administration, ought to be, how to give the greatest efficacy to this essential part of the system; in comparison with which the more or less of expense, must be a matter of trivial moment. The difference of expense between an enlarged and a contracted plan, may be deemed an atom in the great scale of national expenditure. The fulfilment of the important ends of this part of our constitutional plan, though with but a small degree of additional energy, facility, or convenience, must infinitely overbalance the consideration of such difference of expense.

The number of causes which have been tried in these courts, as already intimated, can furnish but a very imperfect test, by which to decide upon their utility or necessity. Their existence alone has a powerful and salutary effect. The liberty to use them, even where it is not often exercised, inspires confidence in the intercourse of business. They are viewed as beneficent guardians, whose protection may be claimed when necessary. They induce caution in the State Courts, and promote in them a more attentive, if not a more able administration of justice. Though in some districts of the Union, the Federal Courts are

* "SEC. II. The judicial power shall extend to all cases in law and equity, arising under this Constitution; the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects."

seldom resorted to, in others they are used in an extensive degree, particularly as between foreigners and citizens, and between citizens of different States.

That their organization throughout the United States ought to be uniform, will not be denied, and it is evident that it ought to be regulated by the situation of those parts in which a greater degree of employment denotes the courts to be most necessary. Of consequence, if the quantity of business were at all a guide, the scenes in which there is the greatest employment for the Federal Courts, ought to furnish the rule of computation; it ought not to be sought for in the aggregate of business, throughout the Union. In reference to this point, it is likewise material to observe that, from the manner in which the Federal Courts were constituted, previous to the last arrangement, *the organization* of the State Courts was so much better adapted to expedition, as to afford a strong motive for giving them a preference. The establishment of Circuit Courts, as now modified, will vary that circumstance, and thus attract more business; but it is evident that it must require a course of years fully to exemplify its operation. To attempt, therefore, to draw important inferences from the short experience hitherto had, is worse than puerile.

LUCIUS CRASSUS.

NO VI.

January, 1802.

In answer to the observations in the last number, it may perhaps be said, that the message meant nothing more than to condemn the recent *multiplication* of Federal Courts, and to bring them back to their original organization: considering that as adequate to all the purposes of the Constitution; to all the ends of justice and policy.

Towards forming a right judgment on this point, it may be of service to those who are not familiar with the subject, to state

briefly what was the former, and what is the present establishment.

The former consisted of one Supreme Court with six judges, who twice a year made the tour of the United States, distributed into three circuits, for the trial of causes arising in the respective districts of each circuit; and of fifteen District Courts, each having a single judge. The present consists of one Supreme Court with the like number of judges, to be reduced on the first vacancy happening, to five; of six Circuit Courts, having three distinct judges each, excepting one circuit, which has only a single circuit judge; and of twenty-two District Courts, with a judge for each as before: In both plans, the Supreme Court is to hold two terms at the seat of government, and the Circuit Courts are to be holden twice a year in each district: The material difference in the two, as it respects the organs by which they are executed, is reducible to the creation of twenty-three additional judges; sixteen for the six Circuit Courts, seven for the superadded District Courts, and the addition of the necessary clerks, marshals, and subordinate officers of Seven Courts. This shows at a single view, that the difference of expense, as applied to the United States, is of trifling consideration.

But here an inquiry naturally presents itself; why was the latter plan substituted to the former more economical one? The solution is easy and satisfactory. The first was inadequate to its object, and incapable of being carried into execution. The extent of the United States is manifestly too large for the due attendance of the six judges in the Circuit Courts. The immense journeys they were obliged to perform, kept them from their families for several successive months in the year; this rendered the office a grievous burden, and had a strong tendency to banish or exclude men of the best talents and characters from these important stations. It is known to have been no light inducement with one Chief Justice, whose health was delicate, to quit that office for another attended with less bodily fatigue; and it is well understood that other important members of the Supreme Court were prepared to resign their situations, if there had not been some alteration of the kind which has taken place. It was

also no uncommon circumstance for temporary interruption in the health of particular judges, of whom only one was attached to a circuit, to occasion a failure in the sessions of the courts; to the no small disappointment, vexation and loss of the suitor. At any rate the necessity of visiting, within a given time, the numerous parts of an extensive circuit, unavoidably rendered the sessions of each court so short, that, where suits were in any degree multiplied, or intricate, there was not time to get through the business with due deliberation. Besides all this, the incessant fatigues of the judges of the Supreme Court, and their long and frequent absences from home, prevented that continued attention to their studies, which even the most learned will confess to be necessary for those, intrusted in the last resort with questions frequently novel, always of magnitude, affecting not only the property of individuals, but the rights of foreign nations, and the Constitution of the country.

For these reasons, it became necessary either to renounce the Circuit Courts, or to constitute them differently: the latter was preferred. The United States were divided into six circuits, with a proper number of judges to preside over each. No man of discernment will pretend that the number of circuits is too great. Surely three States, forming an area of territory equal to that possessed by some of the first powers of Europe, must afford a quantity of business sufficient to employ three judges on a circuit, twice a year; and certainly not less than three will suffice for the dispatch of business, whether the number of causes be small or great. The inconsiderable addition made to the number of the District Courts will hardly excite criticism, and does not, therefore, claim a particular discussion, nor will their necessity be generally questioned. They are almost continually occupied with revenue and admiralty causes, besides the great employment collaterally given to the judges, in the execution of the Bankrupt Act, which probably must increase instead of being diminished.

Perhaps it may be contended, that the Circuit Courts ought to be abolished altogether, and the business for which they are designed, left to the State Courts, with a right of appeal to the

Supreme Courts of the United States. Indeed, it is probable that this was the true design of the intimation in the Message: *A disposition to magnify the importance of the particular States, in derogation from that of the United States*, is a feature in that communication, not to be mistaken. But to such a scheme there are insuperable objections. The right of appeal is by no means equivalent to the right of applying, in the first instance, to a tribunal agreeable to the suitor. The *desideratum* is to have impartial justice, at a moderate expense, administered "promptly and without delay;" not to be obliged to seek it through the long, and tedious, and expensive process of an appeal. It is true, that in causes of sufficient magnitude, an appeal ought to be open; which includes the possibility of going through that process; but when the courts of original jurisdiction are so constituted as not only to deserve, but to inspire confidence, appeals, from the inevitable inconvenience attached to them, are exceptions to the general rule of redress; where the contrary is the situation, they become the general rule itself. Appeals will then be multiplied to a pernicious extent; while the difficulties to which they are liable, operate in numerous instances as a preventive of justice, because they fall with most weight on the least wealthy suitor. It is to be remembered, that the cases in which the Federal Courts would be perferred, are those, where there would exist some distrust of the State Courts; and this distrust would be a fruitful source of appeals. To say that there could be no good cause for this distrust, and that the danger of it is imaginary, is to be wiser than experience, and wiser than the Constitution. The first officer of the government, when speaking in his official capacity, has no right to attempt to be thus wise. His duty exacts of him that he should respectfully acquiesce in the spirit and ideas of that instrument under which he is appointed.

The detail would be invidious, perhaps injurious; else it would be easy to show, that however great the confidence to which the tribunals in some of the States are entitled, there is just cause for suspicion as to those of others; and that in respect to a still greater number, it would be inexpedient to delegate

to them the care of interests which are specially and properly confided to the government of the United States.

The plan of using the State Courts as substitutes for the Circuit Courts of the Union, is objectionable in another view. The citizens of the United States have a right to except from those who administer our government, the efficacious enjoyment of those privileges, as suitors, for which the Constitution has provided. To *turn them round*, from the enjoyment of those privileges, in originating their causes, to the eventual and dilatory resource of an appeal, is in a great degree to defeat the object contemplated. This is a consideration of much real weight, especially to the merchants in our commercial States.

In the investigation of our subject, it is not to be forgotten, that the right to employ the agency of the State Courts, for executing the laws of the Union, is liable to question, and has, in fact, been seriously questioned. This circumstance renders it the more indispensable, that the permanent organization of the Federal Judiciary should be adapted to the prompt and vigorous execution of those laws.

The right of Congress to discontinue judges once appointed, by the abrogation of the courts for which they were appointed, especially as it relates to their emoluments, offers matter for a very nice discussion, but which shall now be only superficially touched.

On the one hand, it is not easy to maintain that Congress cannot abolish courts which, having been once instituted, are found in practice, to be inconvenient and unnecessary. On the other, if it may be done, so as to include the annihilation of existing judges, it is evident that the measure may be used to defeat that clause of the Constitution, which renders the duration and the emoluments of the judicial office coextensive with the good behavior of the officer; an object essential to the independence of the judges, the security of the citizen, and the preservation of the government.

As a medium which may reconcile opposite ideas, and obviate opposite inconveniences, it would, perhaps, be the best and safest

practical construction to say, that though Congress may abolish the courts, yet shall the actual judges retain their character and their emoluments, with the authorities of office, so far as they can be exercised elsewhere than in the courts. For this construction, a precedent exists in the last arrangement of the Judiciary. Though the number of the judges of the Supreme Court is reduced from six to five, yet the *actual* reduction is wisely deferred to the *happening of a vacancy*. The expense of continuing the salaries of the existing incumbents, cannot prudently be put in competition with the advantage of guarding from invasion one of the most precious provisions in the Constitution. Nor ought it to be without its weight, that this modification will best comport with good faith, on the part of government, towards those who had been invited to accept offices, to be held, not by an uncertain tenure, but during *good behavior*.

Weighing maturely all the very important and very delicate considerations which appertain to the subject, would a wise or prudent statesman hazard the consequences of immediately unmaking, at one session, courts and judges, which had only been called into being at the one preceding? Delectable indeed must be the work of disorganization, to a mind which can thus rashly advance in its prosecution!—Infatuated must that people be, who do not open their eyes to projects so intemperate—so mischievous!—Who does not see what is the ultimate object? *Delenda est Carthago*—Ill-fated Constitution, which Americans had fondly hoped would continue for ages, the guardian of public liberty, the source of national prosperity!

LUCIUS CRASSUS.

NO. VII.

January 7, 1802.

The next most exceptionable feature in the Message, is the proposal to abolish all restriction on naturalization, arising from

a previous residence. In this the President is not more at variance with the concurrent maxims of all commentators on popular governments, than he is with himself. The Notes on Virginia are in direct contradiction to the Message, and furnish us with strong reasons against the policy now recommended. The passage alluded to is here presented. Speaking of the *population* of America, Mr. Jefferson says, "Here I will beg leave to propose a doubt. The present desire of America, is to produce rapid population, by as great *importations of foreigners* as possible. *But is this founded in good policy?*" "Are there no inconveniences to be thrown into the scale, against the advantage expected from a multiplication of numbers, by the *importation of foreigners?* It is for the happiness of those united in society, to harmonize as much as possible, in matters which they must of necessity transact together. Civil government being the sole object of forming societies, its administration must be conducted by common consent. Every species of government has its specific principles. Ours, perhaps, are more peculiar than those of any other in the universe. *It is a composition of the freest principles of the English Constitution,* with others, derived from natural right and reason. To these, nothing can be more opposed than the maxims of absolute monarchies. Yet from such, we are to expect the *greatest number of emigrants. They will bring with them the principles of the governments they leave, imbibed in their early youth: or if able to throw them off, it will be in exchange for an unbounded licentiousness, passing as is usual, from one extreme to another. It would be a miracle were they to stop precisely at the point of temperate liberty. Their principles with their language, they will transmit to their children.* In proportion to their numbers, *they will share with us in the legislation.* They will infuse *into it their spirit, warp and bias its direction, and render it a heterogeneous, incoherent, distracted mass.* I may appeal to experience, during the present contest, for a verification of these conjectures; but if they be not certain in event, are they not possible, are they not probable? *Is it not safer to wait with patience for the attainment of any degree of population desired or expected?* May not our government be more homogeneous, *more peaceable, more durable?* Suppose twenty millions of republican

Americans, thrown all of a sudden into France, what would be the condition of that kingdom? If it would be more turbulent, less happy, less strong, we may believe that the addition of half a million of foreigners, to our present numbers, would produce a similar effect here." Thus wrote Mr. Jefferson in 1781—Behold the reverse of the medal. The Message of the President contains the following sentiments: "A denial of citizenship under a residence of fourteen years, is a denial to a great proportion of those who ask it, and controls a policy pursued from their first settlement, by many of these States, and *still believed of consequence to their prosperity.* And shall we refuse to the unhappy fugitives from distress, *that hospitality which the savages of the wilderness extended to our fathers arriving in this land?* Shall oppressed humanity find no asylum on this globe? Might not the general character and capabilities of a citizen, be safely communicated to *every one* manifesting a bona fide purpose of embarking his life and fortune permanently with us?"

But if gratitude can be allowed to form an excuse for inconsistency in a public character—in *the man of the people;* a strong plea of this sort may be urged in behalf of our President. *It is certain*, that had the late election been decided entirely by native citizens; had foreign auxiliaries been rejected on both sides, the man who ostentatiously vaunts that the *doors of public honor and confidence have been burst open to him*, would not now have been at the head of the American nation. Such a proof then of virtuous discernment in the *oppressed fugitives*, had an imperious claim on him to a grateful return, and without supposing any very uncommon share of *self-love*, would naturally be a strong reason for a revolution in his opinions.

The pathetic and plaintive exclamations by which the sentiment is enforced, might be liable to much criticism, if we are to consider it in any other light, than as a flourish of rhetoric. It might be asked in return, does the right to *asylum or hospitality* carry with it the right to *suffrage and sovereignty*? And what indeed was the courteous reception which was given to our forefathers, by the savages of the wilderness? When did these humane and philanthropic savages exercise the policy of incor-

porating strangers among themselves, on their first arrival in the country? When did they admit them into their huts, to make part of their families? and when did they distinguish them by making them their sachems? Our histories and traditions have been more than apocryphal, if any thing like this kind and gentle treatment was really lavished by the much-belied savages upon our thankless forefathers. But the remark obtrudes itself, had it all been true, prudence requires us to trace the history farther, and ask what has become of the nations of savages who exercised this policy? And who now occupies the territory which they then inhabited? Perhaps a lesson is here taught which ought not to be despised.

But we may venture to ask what does the President really mean, by insinuating that we treat aliens coming to this country with inhospitality? Do we not permit them quietly to land on our shores? Do we not protect them equally with our own citizens, in their persons and reputation; in the acquisition and enjoyment of property? Are not our courts of justice open for them to seek redress of injuries? And are they not permitted peaceably to return to their own country whenever they please, and to carry with them all their effects? What then means this worse than idle declamation?

The impolicy of admitting foreigners to an immediate and unreserved participation in the right of suffrage, or in the sovereignty of a republic, is as much a received axiom as any thing in the science of politics, and is verified by the experience of all ages. Among other instances, it is known, that hardly any thing contributed more to the downfall of Rome, than her precipitate communication of the privileges of citizenship to the inhabitants of Italy at large. And how terribly was Syracuse scourged by perpetual seditions, when, after the overthrow of the tyrants, a great number of foreigners were suddenly admitted to the rights of citizenship? Not only does ancient, but modern, and even domestic story, furnish evidence of what may be expected from the dispositions of foreigners, when they get too early a footing in a country. Who wields the sceptre of France, and has erected a despotism on the ruins of her former government? *A foreigner.*

Who rules the councils of our own ill-fated, unhappy country? And who stimulates persecution on the heads of its citizens, for daring to maintain an opinion, and for daring to exercise the rights of suffrage? *A foreigner!*—Where then is the virtuous pride that once distinguished Americans?—Where the indignant spirit which in defence of principle, hazarded a revolution to attain that independence now *insidiously* attacked?

LUCIUS CRASSUS.

NO. VIII.

January 12th, 1802.

Resuming the subject of our last paper, we proceed to trace still farther, the consequences that must result from a too unqualified admission of foreigners to an equal participation in our civil and political rights.

The safety of a republic depends essentially on the energy of a common national sentiment; on a uniformity of principles and habits; on the exemption of the citizens from foreign bias, and prejudice; and on that love of country which will almost invariably be found to be closely connected with birth, education, and family.

The opinion advanced in the Notes on Virginia is undoubtedly correct, that foreigners will generally be apt to bring with them attachments to the persons they have left behind; to the country of their nativity, and to its particular customs and manners. They will also entertain opinions on government congenial with those under which they have lived; or if they should be led hither from a preference to ours, how extremely unlikely is it that they will bring with them that *temperate love of liberty*, so essential to real republicanism? There may, as to particular individuals, and at particular times, be occasional exceptions to these remarks, yet such is the general rule. The influx of foreigners must, therefore, tend to produce a heterogeneous compound; to change and corrupt the national spirit; to complicate

and confound public opinion; to introduce foreign propensities. In the composition of society, the harmony of the ingredients is all-important, and whatever tends to a discordant intermixture must have an injurious tendency.

The United States have already felt the evils of incorporating a large number of foreigners into their national mass; by promoting in different classes different predilections in favor of particular foreign nations, and antipathies against others, it has served very much to divide the community and to distract our councils. It has been often likely to compromit the interests of our own country in favor of another. The permanent effect of such a policy will be, that in times of great public danger there will be always a numerous body of men, of whom there may be just grounds of distrust; the suspicion alone will weaken the strength of the nation, but their force may be actually employed in assisting an invader.

In the infancy of the country, with a boundless waste to people, it was politic to give a facility to naturalization; but our situation is now changed. It appears from the last census, that we have increased about one-third in ten years; after allowing for what we have gained from abroad, it will be quite apparent that the natural progress of our own population is sufficiently rapid for strength, security, and settlement. By what has been said, it is not meant to contend for a total prohibition of the right of citizenship to strangers, nor even for the very long residence which is now a prerequisite to naturalization, and which of itself goes far towards a denial of that privilege. The present law was merely a temporary measure adopted under peculiar circumstances, and perhaps demands revision. But there is a wide difference between closing the door altogether and throwing it entirely open; between a postponement of fourteen years, and an immediate admission to all the rights of citizenship. Some reasonable term ought to be allowed to enable aliens to get rid of foreign and acquire American attachments; to learn the principles and imbibe the spirit of our government; and to admit of a probability at least, of their feeling a real interest in our affairs. A residence of not less than five years ought to be required.

If the rights of naturalization may be communicated by parts, and it is not perceived why they may not, those peculiar to the conducting of business and the acquisition of property, might with propriety be at once conferred, upon receiving proof, by certain prescribed solemnities, of the intention of the candidates to become citizens; postponing all political privileges to the ultimate term. To admit foreigners indiscriminately to the rights of citizens, the moment they put foot in our country, as recommended in the message, would be nothing less than to admit the Grecian horse into the citadel of our liberty and sovereignty.

LUCIUS CRASSUS.

NO. IX.

January 18, 1802.

The leading points of the message have been sufficiently canvassed, and it is believed to have been fully demonstrated, that this communication is chargeable with all the faults which were imputed to it on the outset of the examination. We have shown that it has made, or attempted to make, prodigal sacrifices of constitutional energy, of sound principle, and of public interest. In the doctrine respecting war, there is a senseless abandonment of the just and necessary authority of the executive department, in a point material to our national safety. In the proposal to relinquish the internal revenue, there is an attempt to establish a precedent ruinous to our public credit; calculated to *prolong the burthen of the debt*, and to enfeeble and sink the government, by depriving it of resources of great importance to its respectability, to the accomplishment of its most salutary plans, to the power of being useful. In the attack upon the judiciary establishment, there is a plain effort to impair that organ of the government: one on which its efficiency and success absolutely depend. In the recommendation to admit indiscriminately foreign emigrants to the privileges of American citizens, on their first entrance into our country, there is an attempt to break down every pale which

has been erected for the preservation of a national spirit and a national character, and to let in the most powerful means of perverting and corrupting both the one and the other.

This is more than the moderate opponents of Mr. Jefferson's elevation ever feared from his administration; much more than the most wrong-headed of his own sect dared to hope; infinitely more than any one who had read the fair professions in his Inaugural speech could have suspected. Reflecting men must be dismayed at the prospect before us. If such rapid strides have been hazarded in the very gristle of his administration, what may be expected when it shall arrive at manhood? In vain was the collected wisdom of America convened at Philadelphia.—In vain were the anxious labors of a Washington bestowed.—Their works are regarded as nothing better than empty bubbles, destined to be blown away by the mere breath of a disciple of *Turgot;* of a pupil of *Condorcet.*

Though the most prominent features of the message have been portrayed, and their deformity exhibited in true colors; there remain many less important traits not yet touched, which, however, will materially assist us in determining its true character. To particularize them with minuteness would employ more time and labor than the object deserves; yet to pass them by, wholly without remark, would be to forego valuable materials for illustrating the true nature of the performance under examination.

There remains to be cursorily noticed, a disposition in our Chief Magistrate, far more partial to the State governments, than to our National government; to pull down rather than to build up our federal edifice—to villify the past administrations of the latter—to court for himself popular favor by artifices not to be approved, either for their dignity, their candor or their patriotism.

Why are we emphatically and fastidiously told, that "the States individually have the *principal care* of our *persons*, our *property* and our *reputation, constituting the great field of human concerns?*" Was it to render the State governments more dear to us, more the objects of affectionate solicitude? Nothing surely was necessary on this head; they are already the favorites of the people, and if they do not forfeit the advantage by a most gross abuse of

trust, must, by the very nature of the objects confided to them, continue always to be so. Was it to prevent too large a portion of affection from being bestowed on the general government? No pains on this score were requisite; not only for the reason just assigned, but for the further reason that the more peculiar objects of this government, though no less essential to our prosperity than those of the State governments, oblige it often to act upon the community in a manner more likely to produce aversion than fondness. Accordingly every day furnishes proof, that it is not the *spoiled child of the many.* On this point the high example of the President himself is pregnant with instruction. Was it to indicate the supreme importance of the State governments over that of the United States? This was as little useful as it was correct. Considering the vast variety of humors, prepossessions and localities which, in the much diversified composition of these States, militate against the weight and authority of the general government, if union under that government is necessary, it can answer no valuable purpose to depreciate its importance in the eyes of the people. It is not correct; because to the care of the federal government are confided directly, those great, general interests on which all particular interests materially depend: our safety in respect to foreign nations; our tranquillity in respect to each other; the foreign and mutual commerce of the States; the establishment and regulation of the money of the country; the management of our national finances; indirectly, the security of liberty by the guaranty of a republican form of government to each State; the security of property by interdicting any State from emitting paper money or from passing laws impairing the obligation of contracts (from both of which causes the rights of property had experienced serious injury); the prosperity of agriculture and manufactures, as intimately connected with that of commerce, and as depending in a variety of ways upon the agency of the general government. In fine, it is the province of the general government to manage the greatest number of those concerns in which the provident activity and exertion of *government* are of most importance to the people; and we have only to compare the state of our country antecedent to the establishment of the federal

Constitution, with what it has been since, to be convinced that the most operative causes of public prosperity depend upon that Constitution. It is not meant, by what has been said, to insinuate that the State governments are not extremely useful in their proper spheres; but the object is to guard against the mischiefs of exaggerating their importance, in derogation from that of the general right. Every attempt to do this, is, remotely, a stab at the union of these States; a blow to our collective existence as one people—and to all the blessings which are interwoven with that sacred fraternity.

If it be true, as insinuated, that, "our organization is too complicated—too expensive," let it be simplified; let this, however, be done in such a manner as not to mutilate, weaken, and eventually destroy our present system, but to increase the energy, and insure the duration of our national government—THE ROCK OF OUR POLITICAL SALVATION.

In this insinuation, and in the suggestion that "offices and officers have been unnecessarily multiplied;" in the intimation that appropriations have not been sufficiently specific, and that the system of accountability to a single department has been disturbed; in this, and in other things, too minute to be particularized, we discover new proofs of the disposition of the present executive, unjustly and indecorously to arraign his predecessors.

As far as the message undertakes to specify any instance of the improper complexity of our organization, namely, in the instance of the judiciary establishment, the late administration has been already vindicated.

As to the "*undue* multiplication of offices and officers," it is substantially a misrepresentation. It would be nothing less than a miracle if, in a small number of instances, it had not happened that particular offices and officers might have been dispensed with. For, in the early essays of a new government, in making the various establishments relative to the affairs of a nation, some mistakes in this respect will arise, notwithstanding the greatest caution. It must happen to every government that, in the hurry of a new plan, some agents will occasionally be employed, who may not be absolutely necessary; and this, where there is every

inclination to economy. Similar things may have happened under our past administrations; but any competent judge, who will take the trouble to examine, will be convinced, that there is no just cause for blame in this particular.

The President has not pointed out the cases to which he applies the charge; but he has communicated information of some retrenchments which he has made, and probably intends that from these the truth of the accusation shall be inferred.

Three instances are particularly presented; these shall be briefly examined; it will be seen that they do not justify the imputation. They respect certain ministers at foreign courts; some navy agents at particular ports; and some inspectors of the revenue in particular States.

As to the first, it is believed to be a pretty just idea, that we ought not greatly to multiply diplomatic agencies. Three permanent ones may, perhaps, be found sufficient in the future progress of our affairs: for *France*, *Spain*, and *England*. The expediency of having three, is recognized by the conduct of our present Chief Magistrate. But others must be employed, and during particular seasons it may be wise to do it for a considerable length of time. Indeed there is strong ground for an opinion entertained by very sensible men, that there ought to be a permanent minister at every court with which we have extensive commercial relations.

Two other ministers were employed by both the former administrations, one with Portugal, the other with Holland; and it is asserted without fear of denial, that when this was done by the first President, it was with the approbation of Mr. Jefferson himself. One other minister was employed by the late President at the court of Berlin.

A commercial treaty with Portugal is admitted, on all hands, to be particularly desirable; as very interesting branches of our commerce are carried on in the Portuguese dominions. We are still without any such treaty: to send to that court a diplomatic agent to endeavor to effect one, was a measure of evident propriety; to recall him before a treaty had been effected, must be of questionable expediency. The views and circumstances of

nations change; and an opportunity may occur, at some particular conjuncture, for effecting what was not before possible, which may be lost by the want of a fit agent on the spot to embrace it. But admitting the experiment has now been sufficiently tried to justify its abandonment, still it does not follow that it was unwise to have continued it as long as it was; and as this must at least rest in opinion, the continuance, if upon an erroneous calculation in this particular, is no proof of a "disposition to multiply offices or officers." And those who consider the nature and extent of our commercial relations with Portugal, will not cease to think it problematical, whether the expense of a diplomatic agent, especially in a situation in which nothing has been defined by treaty, ought to stand in competition with the benefits which may result from the presence of a minister at the court of that kingdom. This consideration alone is sufficient to repel the charge.

LUCIUS CRASSUS.

NO. X.

January 19th, 1802.

As to Holland—being the second power which acknowledged our independence, and made a treaty with us, a step which involved her in war with Great Britain, it was deemed proper to treat her with a marked respect. Besides this, from the time of our revolution to the present, we have had large money concerns with her people. A trusty and skilful public agent was for a long time necessary to superintend those concerns; and by the annexation of a diplomatic character, a double purpose was answered. The honorable nature of the station enabled the government to find a competent agent at a less expense than would have been requisite to procure one merely for the money object. It is not meant to deny, that the great change which has lately happened in the affairs of that country, making it in effect a dependency on France, rendered a removal of the minister proper:

but it does not follow that it ought to have been done sooner. It is also known, that Mr. Murray, the late envoy, has been for a considerable time past employed in our negotiations with France, which probably was a collateral reason for not recalling him sooner. In respect to one, if not to both these agents, it may be observed, that a time of war was not the most eligible moment for the removal of a minister.

As to Berlin, the inducements for keeping a minister there, have never been fully explained. It is only known, that our commercial treaty with Prussia had expired, and that a renewal has been effected by the envoy sent thither; but influential as was the court of Prussia in the affairs of Europe, during the late dreadful storm, it may have been conceived that a cultivation of the good will of the Prussian monarch was not a matter of indifference to the peace and security of this country. If this was the object of the mission, though there may have been too far-fetched a policy in the case, it offers a defence of the measure, which exculpates the executive, at least from the charge of a desire to multiply officers improvidently.

On the most unfavorable supposition, then, here was one diplomatic agent too many, and two others were continued longer than was absolutely necessary. This surely is not of magnitude sufficient to constitute a serious charge, where malevolence does not inspire a spirit of accusation. In considering this question, it ought to be remembered, that it is the prevailing policy of governments to keep diplomatic agents at all courts where they have important relations.

As to the navy agents, it is sufficient to say, that they were temporary persons who grew up out of our rupture with France; who, when they were appointed, were useful to accelerate naval preparations at as many points as could be advantageously occupied, and that it was only proper to discontiuue them when an accommodation had been effected, and after they had had time enough to wind up the affairs of their agency. This was not the case previous to Mr. Jefferson's administration. Accordingly, in some early instances of removal, it was only done to substitute members of his own *sect.* And though several of the navy agents

were afterwards discontinued, spleen itself cannot imagine any color of blame, either as to the appointment or continuance of them.

As to the inspectors of the revenue, the case in brief stands thus: When the excise on distilled spirits was established, three different descriptions of officers were instituted to carry it into effect—supervisors, inspectors, and collectors, distributed to districts, surveys and divisions, one to each. A district comprehending an entire State; a survey some large portions of it or a number of counties; a division for the most part a single county. In some of the small States there were no distinct officers for the surveys—the duties of inspectors being annexed to those of supervisor; in larger ones there were inspectors; more or less numerous, according to their extent. As other internal revenues were established, they were put under the management of the same officers. The bare statement of the fact shows the necessity of these officers. The revenues of no government were perhaps ever collected under a more simple organization, or through a smaller number of channels. It is not alleged that the first and last classes of officers were unnecessary. It is only to the middle class that any specious objection can be made. Let us conjecture the reasons for employing them.

In some of the States great opposition was expected, and was actually experienced. In such States especially, it was evidently useful to have the exertions of some men of weight and character in spheres of moderate extent, to reconcile the discontented; to arrange the details of business, and to give energy to the measures for collection. In others, similar officers were probably useful in the early stages, for the purpose of establishing the details simply. The subdivision was in all cases favorable to an active and vigilant superintendence. Nor does it require extraordinary penetration to discern that the policy was wise at the time when the measure was adopted. It is possible that upon the complete establishment of the plan, when all opposition had been vanquished, and when the collection had become an affair of mere routine, that this intermediate class may have ceased to be essential. But till this had become perfectly evident, it would have been premature to alter the original plan. Though it be

true, that some years have elapsed since the excise law was passed, it is not very long since it has been in full and uninterrupted operation. Other laws, introducing other branches of internal revenue, have been subsequently passed from time to time, and the agency of the same officers has probably been found useful on their first introduction and execution. Hence it is easily accounted for, that the inspectors were not before discontinued, if indeed experience has shown that they are not still necessary, which is itself problematical. Nothing is more easy than to reduce the number of agents employed in any business, and yet for the business to go on with the reduced number. But before the reduction is applauded, it ought to be ascertained that the business is as well done as it was before. There is a wide difference between merely getting along with business and doing it well and effectually.

These observations sufficiently show, that in the instances which have been cited there is no evidence of a disposition, in the preceding administrations, improperly to multiply offices and officers. Acting under different circumstances, they conducted as those circumstances dictated, and in all probability in a manner the best adapted to the advancement of the public service. A change of circumstances may, in some instances, have rendered a continuance of some of the agents thus employed unnecessary; and the present Chief Magistrate may even be right in discontinuing them; but it is not therefore right to attempt to derive from this any plea of peculiar merit with the people; and it is very far from right to make it a topic of slander on prede cessors. Perhaps, however, this is too rigorous a construction, and that nothing more was intended than to set off to the best advantage, the petty services of petty talents.

If this was the true aim, it is to be regretted that it was not so managed as to avoid the appearance of a design to depreciate in the public estimation, those who went before. Had this delicacy been observed, the attempt would have attracted neither notice nor comment. At most it would have been said,

> "Commas and points he sets exactly right,
> And 'twere a sin to rob him of his mite."
>
> LUCIUS CRASSUS.

NO. XI.

February 8, 1793.

The Message observes, "that in our care of the public contributions intrusted to our direction, it would be prudent to multiply barriers against the dissipation of public money, by appropriating specific sums to every specific purpose, *susceptible of definition;* by disallowing all applications of money varying from the appropriation in object, or transcending it in amount, by reducing the undefined field of contingencies, and thereby circumscribing discretionary powers over money, and by *bringing back* to a single department all accountabilities for money where the examination may be prompt, efficacious, and uniform." In this recommendation we can be at no loss to discover additional proof of a deliberate design in the present Chief Magistrate, to arraign the former administrations. All these suggestions imply, on their part, either a neglect of, or a defective attention to, the objects recommended; some of them go farther, and insinuate that there had been a departure from correct plans, which had before been adopted. The censure intended to be conveyed is as unjust, as the conceptions which have dictated it are crude and chimerical. In all matters of this nature, the question turns upon the proper boundaries of the precautions to be observed; how far they ought to go; where they should stop; how much is necessary for security and order; what qualifications of general rules are to be admitted to adapt them to practice, and to attain the ends of the public service. It is certainly possible to do too much as well as too little; to embarrass, if not defeat the end intended, by attempting more than is practicable; or to overbalance the good, by evils accruing from an excess of regulation. Men of business know this to be the case in the ordinary affairs of life: how much more must it be so, in the extensive and complicated concerns of an empire? To reach and not to pass the salutary medium is the province of sound judgment. To miss the point, will ever be the lot of those, who, enveloped all their lives in the mist of theory, are constantly seeking for

an ideal perfection, which never was and never will be attainable in reality. It is about this medium, not about general principles, that those in power in our government have differed; and to experience, not to the malevolent insinuations of rivals, must be the appeal, whether the one or the other description of persons have judged most accurately. Yet discerning men may form no imperfect opinion of the merits of the controversy between them, by even a cursory view of the distinctions on which it has turned.

Nothing, for instance, is more just or proper than the position that the legislature ought to appropriate specific sums, for specific purposes; but nothing is more wild or of more inconvenient tendency, than to attempt to appropriate "a specific sum for each specific purpose, *susceptible of definition*," as the Message preposterously recommends. Thus (to take a familiar example) in providing for the transportation of an army; *oats* and *hay* for the subsistence of horses, are each susceptible of a definition, and an estimate, and a precise sum may be appropriated for each separately; yet in the operations of an army, it will often happen that more than a sufficient quantity of the one article may be obtained, and not a sufficient quantity of the other: if the appropriations be distinct, and the officer who is to make the provision, be not at liberty to divert the fund from one of these objects to the other (as the doctrine of the Message implies), the horses of the army may in such a case starve; and its movements be arrested—in some situations, even the army itself may likewise be starved, by a failure of the means of transportation.

If it be said, that the inconvenience here suggested may be avoided, by making the appropriations for *forage* generally, and not for the items which compose it separately—the answer is, first, that this, by uniting and blending different things, susceptible each of a precise definition, is an abandonment of the principle of the Message; secondly, that it would be only a partial cure for the mischiefs incident to that rigorous principle. It might happen that the badness of roads would injure the wagons of the army more than was anticipated, and so much more, as to exhaust the specific fund appropriated for their repairs; it might also have happened, from various causes, that at an earlier period

of the campaign, the consumption of forage had been less than was calculated, so that there would be a surplus of the fund destined for this object; if, in such a case, the public agent could not transfer that surplus to the repairs of the wagons, the motions of the army might, in this way, be suspended, and in the event, famine and ruin produced.

This analysis might be pursued, so as to prove that similar evils are inseparable from a much more qualified application of the principle in the Message, and to demonstrate that nothing more can safely or reasonably be attempted, than to distribute the public expenses, into a certain number of convenient subdivisions or departments; to require from the proper officers, estimates of the items, which are to compose each head of expense; and after examining these with due care, to adapt the appropriations to the respective aggregates; applying a specific sum to the amount of each great subdivision:—the pay of the army; military stores; quartermaster stores, &c., &c. This, with even more detail than could be well executed, has been uniformly done, under the past administrations of the present government from the very beginning of its proceedings. More will, in the experiment, be found impracticable and injurious; especially in seasons and situations when the public service demands activity and exertion.

In like manner, the former practice of the government has corresponded with the rule, taken in its true and just sense, of "disallowing all applications of money, varying from the appropriation in object, or transcending it in amount." It is confidently believed, that whoever shall allege or insinuate to the contrary, may be challenged to point out the instance in which money has been issued from the Treasury for any purpose which was not sanctioned by a regular appropriation, or which exceeded the appropriated amount; or where there was an expenditure of money allowed, that was not strictly within the limits of such an appropriation; except, indeed, upon the impracticable idea of minutely separating, and distinguishing the items, which form the aggregate of some general head of expenditure.

It is likewise material to have it well understood that, gene-

rally speaking, the distinction between the appropriations for different objects can only be strictly observed at the Treasury itself; which can easily take care that more money shall not go out for any purpose than is authorized by law; and can see that this money is fairly expended by the proper officer, in conformity with the general spirit of the appropriation prescribed by the law. But it is in most cases impossible for the officer, charged with a particular branch of the public service, to separate nicely in the details of expenditure, the differents funds which may have been placed in his hands. Thus (still drawing our examples from the military department, where the danger of misapplication is always the greatest) if several sums be placed in the hands of the Quartermaster-General, for different objects, he must, of necessity, distribute a large proportion of them among his principal deputies, and these again among subordinate agents Unless this distribution be pursued through the remotest ramifications, down to the moment of final expenditure, it is evident that it must fail throughout; and it is no less evident that it cannot be so far pursued. But to this, the accountantship only would be an insuperable obstacle; it would require in every the most inferior agent, a profound knowledge of accounts, and would impose, both on principals and subordinates, the duty of keeping such a multiplicity of them, as, if even practicable, would exhaust the funds issued for the public service, in mere clerkship. Another most mischievous consequence would ensue. The exigenciesof the public service are often so variable, that a public agent would frequently find himself full-handed for one purpose, empty-handed for another, and if forbidden to make a transfer, not only the service would suffer, but an opportunity, with very strong temptation, would be given, to traffic with the public money for private gain; while the business of the government would be stagnated by the injudicious and absurd impediments of an over-driven caution. Happily, it is not very material that the principle of distinct appropriations for separate objects, should be carried through all the details. The essential ends of it are answered, if it be strictly pursued, in the issuing of money from the Treasury, and if this department be careful that the principal lines of discrimination are not transgressed.

The theory of the Message plainly contemplates, that in no case shall the *actual money* appertaining to one fund, be expended for the purpose of another; though each fund may be sufficient for its object, and though there may be an appropriation for each object. This is another excess of theory; which, with a *full treasury*, would often disable the government from fulfilling its engagements, and from carrying on the public business. To execute this plan, consistently with the exigencies of national expenditure, would probably require, in ordinary, a triplication of the revenues, or a capital necessary for the whole amount of that expenditure, and would very often lock up from circulation large sums, which might be of great importance to the activity of trade and industry. Such are the endless blessings to be expected from the notable schemes of a philosophic *projector!* Strict to a fault, where relaxation is necessary; lax to a vice, where strictness is essential!

As to "reducing the undefined field of contingencies, and circumscribing discretionary powers over money," observations similar to those which have been already made, occur. The term *reducing*, implies, that the thing must exist in a degree; and indeed it is manifest, that all the minute casualties of expenditure, especially in the naval and military departments, cannot be foreseen and defined. The question then must be, have not the limits been sufficiently narrow for the situation of the government, in the scenes through which it has passed; comprehending for a great part of the time Indian wars and foreign hostilities? Certainly, if viewed on a proportionable scale, the extent appears to have been as moderate as could have been desired; and no blame can justly attach to the administration, on this account.

As to "*bringing back* to a single department all accountabilities for money," there never has been a deviation from that system. The department of the Treasury has uniformly preserved a vigilant superintendence over all accountabilities for public money. A particular accountant, indeed, has been appointed in the War and Navy departments, but he has been subordinate to the Treasury department, which has prescribed regulations for his conduct, and has constantly revised his proceedings. It is

true, that by his connection with the particular department for which he is accountant, there are cases in which he is to be guided by the directions of the head of that department; but though these directions, if not plainly contrary to the rules prescribed by the Treasury, would exempt him from responsibility, the directions themselves pass under the review of the Treasury, as a check upon the head of the department to which he is attached; and in case of abuse, they would serve to establish a responsibility of the principal. To say that this interferes with a prompt examination of accounts, is to affirm that a division of labor is injurious to dispatch; a position contrary to all experience. The fact, without doubt, is, that it essentially contributes to dispatch; and that whatever new modification may be adopted, either the accounts of the other departments will never keep pace with the current of business in times of activity, or that modification must adhere to the principle of employing distinct organs.

If it be the design to exclude, in every case, the intervention of the head of the particular department, some or all of these evils will follow: The service of that department will suffer by unduly restricting its head, in cases in which he must be the most competent judge; and by obliging him, in order to avoid eventual difficulties, to resort, in the first instance, to another department, less alive than himself to the exigencies of his own, for a cautious and slow, perhaps a reluctant acquiescence in arrangements which require promptness; if in the spirit of confidence and accommodation, the officers of the Treasury yield a ready compliance with the wishes of the head of such department, they may inadvertently co-operate in measures which they would have disapproved and corrected on a deliberate and impartial revision. If this spirit be not shown, not only the immediate service of the department may be improperly impeded, but sensations unfriendly to the due harmony of the different members of the administration may be engendered. On one side of the dilemma stands collusion, on the other discord.

The existing plan steers a middle and a prudent course; neither fettering too much the heads of the other departments

nor relinquishing too far the requisite control of the Treasury. Its opposite supposes all trust may be placed in one department —none in the others. The extravagant jealousy of the overbearing influence of the Treasury department, which was so conspicuous in the times of the two former secretaries, has of a sudden given way to unlimited confidence! The intention seems to be to surround the brow of their immaculate successor with the collected rays of legislative and executive favor. But vain will be the attempt to add lustre to the dim luminary of a benighted administration!

LUCIUS CRASSUS.

NO. XII.

February 23, 1802.

From the manner in which the subject was treated in the fifth and sixth numbers of the Examination, it has been doubted, whether the writer did or did not entertain a decided opinion as to the power of Congress to abolish the offices and compensations of judges, once instituted and appointed, pursuant to a law of the United States. In a matter of such high constitutional moment, it is a sacred duty to be explicit. The progress of a bill lately brought into the Senate for repealing the law of the last session, entitled, "an Act to provide for the more convenient organization of the courts of the United States," with the avowed design of superseding the judges who were appointed under it, has rendered the question far more serious than it was while it rested merely on the obscure suggestion in the Presidential Message. Till the experiment had proved the fact, it was hardly to have been imagined, that a majority of either House of Congress, whether from design or error, would have lent its sanction to a glaring violation of our national compact, in that article which, of all others, is the most essential to the efficiency and stability of the government; to the security of property; to the safety and liberty of person. This portentous and fright-

ful phenomenon has, nevertheless, appeared. It frowns with malignant and deadly aspect upon our Constitution. Probably before these remarks shall be read, that Constitution will be no more! It will be numbered among the numerous victims of Democratic frenzy; and will have given another and an awful lesson to mankind—the prelude perhaps of calamities to this country, at the contemplation of which imagination shudders!

With such prospect before us, nothing ought to be left unessayed, to open the eyes of thinking men to the destructive projects of those mountebank politicians, who have been too successful in perverting public opinion, and in cheating the people out of their confidence; who are advancing with rapid strides in the work of disorganization—the sure forerunner of tyranny; and who, if they are not arrested in their mad career, will, ere long, precipitate our nation into all the horrors of anarchy.

It would be vanity to expect to throw much additional light upon a subject, which has already exhausted the logic and eloquence of some of the ablest men of our country; yet it often happens, that the same arguments placed in a new attitude, and accompanied with illustrations, which may have escaped the ardor of a first research, serve both to fortify and to extend conviction. In the hope that this may be the case, the discussion shall be pursued with as much perspicuity and brevity, as can be attained.

The words of the Constitution are, "The judges *both* of the supreme and inferior courts *shall hold their offices during good behavior*, and shall at stated times receive for their services a compensation which *shall not be diminished during their continuance in office.*"

Taking the literal import of the terms as the criterion of their true meaning, it is clear, that the *tenure* or *duration* of the office is limited by no other condition than the *good behavior* of the incumbent. The words are imperative, simple and unqualified: "The judges *shall hold their offices during good behavior.*" Independent therefore of any artificial reasoning to vary the natural and obvious sense of the words, the provision must

be understood to vest in the judge a right to the office, indefeasible but by his own misconduct.

It is, consequently, the duty of those who deny this right, to show, either that there are certain presumptions of intention, deducible from other parts of the constitutional instrument, or certain general principles of constitutional law or policy, which ought to control the literal and substitute a different meaning.

As to presumptions of intention, different from the import of the terms, there is not a syllable in the instrument from which they can be inferred; on the contrary, the latter member of the clause cited affords a very strong presumption the other way.

From the injunction, that the compensation of the judges shall not be diminished, it is manifest that the Constitution intends to guard the independence of those officers against the legislative department; because, to this department *alone* would have belonged the power of diminishing their compensations.

When the constitution is thus careful to tie up the legislature from taking away *part* of the compensation, is it possible to suppose that it can mean to leave that body at full liberty to take away the *whole*? The affirmative imputes to the Constitution the manifest absurdity of holding to the legislature this language: "You shall not *weaken* the independence of the judicial character, by exercising the power of *lessening* his emolument, but you may *destroy* it altogether, by exercising the greater power of *annihilating* the recompense with the office." No mortal can be so blind as not to see that, by such a construction, the restraint intended to be laid upon the legislature by the injunction not to lessen the compensation, becomes absolutely nugatory.

In vain is a justification sought in that part of the article which provides that "the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress *may* from time to time ordain and establish." The position that a discretionary power to institute inferior courts includes virtually a power to abolish them, if true, is nothing to the purpose. The abolition of a court does not necessarily imply that of its judges. In contemplation of law, the court and the judge are distinct things. The court may have a legal existence,

though there may be no judge to exercise its powers. This may be the case, either at the original creation of a court, previous to the appointment of a judge, or subsequently, by his death, resignation, or removal. In the last case, it could not be pretended that the court had become extinct by the event. In like manner, the office of the judge may subsist, though the court in which he is to officiate may be suspended or destroyed. The duties of a judge, as the office is defined in our jurisprudence, are twofold—judicial and ministerial. The latter may be performed out of court, and often without reference to it. As conservator of the peace, which every judge is, *ex officio*, many things are done, not connected with a judicial controversy, or to speak technically, with a *lis pendens*. This serves to illustrate the idea, that the office is something different from the court: which is the place or situation for its principal action, yet not altogether essential to its activity. Besides, a judge is not the less a judge when out of court than when in court. The law does not suppose him to be always in court, yet it does suppose him to be always in office; in vacation as well as in term. He has also a property or interest in his office, which entitles him to civil actions and recompense in damages, for injuries that affect him in relation to his office; but he cannot be said to have a property or interest in the court of which he is a member. All these considerations confirm the hypothesis, that the court and the judge are distinct legal entities, and therefore may exist, the one independently of the other.

If it be replied, that the office is an incident to the court, and that the abolition of the principal includes that of the incidents—the answer to this is, that the argument may be well founded as to all subsequent appointments; but not as to those previously made. Though there be no office to be filled in future, it will not follow that one already vested in an individual, by a regular appointment and commission, is thereby vacated and divested. Whether this shall or shall not happen, must depend on what the Constitution or the law has declared with regard to the *tenure* of the office. Having pronounced that this shall be *during good behavior*, it will preserve the office, to give effect to that

tenure for the benefit of the possessor. To be consistent with itself, it will require and prescribe such a modification and construction of its own acts, as will reconcile its power over the future, with the rights which have been conferred as to the past.

Let it not be said, that an office is a mere trust for public benefit, and excludes the idea of a property or a vested interest in the individual. The first part of the proposition is true—the last false. Every office combines the two ingredients of an interest in the possessor, and a trust for the public. Hence it is that the law allows the officer redress, by a civil action, for an injury in relation to his office, which presupposes property or interest. This interest may be defeasible at the pleasure of the government, or it may have a fixed duration, according to the constitution of the office. The idea of a vested interest holden even by a permanent tenure, so far from being incompatible with the principle, that the primary and essential end of every office is the public good, may be conducive to that very end, by promoting a diligent, faithful, energetic, and independent execution of the office.

But admitting, as seems to have been admitted by the speakers on both sides of the question, that the judge must fall with the court, then the only consequence will be, that Congress cannot abolish a court once established. There is no rule of interpretation better settled, than that different provisions in the same instrument, on the same subject, ought to be so construed, as, if possible, to comport with each other, and give a reasonable effect to all.

The provision that "The judiciary power shall be vested in one supreme court, and in such inferior courts as the Congress *may* from time to time ordain and establish," is immediately followed by this other provision, "The judges *both* of the supreme and inferior courts shall hold their offices during good behavior."

The proposition, that a power to do, includes, virtually, a power to undo, as applied to a legislative body, is generally but not universally true. All *vested rights* form an exception to the rule. In strict theory, there is no lawful or moral power to divest by a subsequent statute, a right vested in an individual, by a

prior. And accordingly it is familiar to persons conversant with legal studies, that the repeal of a law does not always work the revocation or divestiture of such rights.

If it be replied, that though a legislature might act immorally and wickedly, in abrogating a vested right, yet the legal *validity* of its act for such a purpose could not be disputed; it may be answered, that this odious position, in any application of it, is liable to question in every limited Constitution; (that is, in every Constitution, which, in its theory, does not suppose the WHOLE POWER of the nation to be lodged in the legislative body;*)— and that it is certainly false, in its application to a legislature, the authorities of which are defined by a positive written Constitution, as to every thing which is contrary to the actual provisions of that Constitution. To deny this, is to affirm that the *delegated* is paramount to the *constituent* power. It is in fact to affirm there are *no constitutional limits to the legislative authority.*

The inquiry then must be, whether the power to abolish inferior courts, if implied in that of creating them, is not abridged by the clause which regulates the tenure of judicial office.

The first thing which occurs in this investigation, is, that the power to abolish is, at most, an implied or incidental power, and as such, will the more readily yield to any express provision with which it may be inconsistent.

The circumstance of giving to Congress a discretionary power to establish inferior courts, instead of establishing them specifically in the Constitution, has, with great reason, been ascribed to the impracticability of ascertaining beforehand the number and variety of courts, which the development of our national affairs might indicate to be proper; especially in relation to the progress of new settlements, and the creation of new States. This rendered a discretionary power to *institute* courts indispensable; but it did not alike render indispensable a power to abolish those which were once instituted. It was conceivable that with intelligence, caution, and care, a plan might be pursued in the institution of courts, which would render abolitions unnecessary. Indeed, it is

* As in the parliament of Great Britain.

not presumable with regard to establishments of such solemnity and importance, making part of the *organization* of a principal department of the government, that a fluctuation of plans was anticipated. It is therefore not essential to suppose, that the power to destroy was intended to be included in the power to create. Thus the words "to ordain and establish," may be satisfied by attributing to them only the latter effect.—Consequently when the grant of the power to institute courts, is immediately succeeded by the declaration that the judges of those courts shall *hold* their offices during good behavior; if the exercise of the power to abolish the courts, cannot be reconciled with the actual holding or enjoyment of the office, according to the prescribed tenure, it will follow that the power to abolish is interdicted. The implied or hypothetical power, to destroy the office, must give way to the express and positive right of holding it during good behavior. This is agreeable to the soundest rules of construction; the contrary is in subversion of them.

Equally in vain is a justification of the construction, adopted by the advocates of the repeal, attempted to be derived from a distinction between the supreme and inferior courts. The argument, that as the former is established by the Constitution, it cannot be annulled by a legislative act, though the latter which must owe their existence to such an act may by the same authority be extinguished, can afford no greater stability to the office of a judge of the supreme court than to that of a judge of an inferior court. The Constitution does indeed establish the supreme court; but it is altogether silent as to the number of judges. This is as fully left to legislative discretion as the institution of inferior courts; and the rule that a power to undo is implied in the power to do, is therefore no less applicable to the reduction of the number of the judges of the supreme court, than to the abolition of the inferior courts. If the former are not protected by the clause, which fixes the tenure of office, *they* are no less at the mercy of the legislature than the latter. And if that clause does protect them, its protection must be equally effectual for the judges of the inferior courts. Its efficacy, in either case, must be founded on the principle that it operates as a restraint

upon the legislative discretion; and if so, there is the like restraint in both cases, because the very same words in the very same sentence, define conjunctly the tenure of office of the two classes of judges. No sophistry can elude this conclusion.

It is therefore plain to a demonstration, that the doctrine which affirms the right of Congress to abolish the judges of the inferior courts, is absolutely fatal to the independence of the judicairy department. The observation that so gross an abuse of power, as would be implied in the abolition of the judges of the supreme court, ought not to be supposed, can afford no consolation against the extreme danger of the doctrine. The terrible examples before us, forbid our placing the least confidence in that delusive observation. Experience, sad experience, warns us to dread every extremity—to be prepared for the worst catastrophe that can happen.

LUCIUS CRASSUS.

NO. XIII.

February 27, 1802.

The advocates of the power of Congress to abolish the judges, endeavor to deduce a presumption of intention favorable to their doctrine, from this argument. The provision concerning the tenure of office (say they) ought to be viewed as a restraint upon the executive department, *because*, to this department belongs the power of removal; in like manner as the provision concerning the diminution of compensation, ought to be regarded as a restraint upon the legislative department, *because*, to this department belongs the power of regulating compensations. The different members of the clause ought to be taken distributively, in conformity with the distribution of power to the respective departments.

This is certainly the most specious of the arguments which have been used on that side. It has received several pertinent and forcible answers. But it is believed to be susceptible of one

still more direct and satisfactory; which is not recollected to have been yet given.

If, in the theory of the Constitution, there was but one way of *defeating the tenure* of office, and that exclusively appertaining to the executive authority, it would be a natural and correct inference that this authority was solely contemplated, in a constitutional provision upon the subject. But the fact is clearly otherwise. There are two modes known to the Constitution, in which the tenure of office may be affected—one, the abolition of the office; the other, the removal of the officer. The first is a legislative act, and operates by removing the office from the person—the last is an executive act, and operates by removing the person from the office. Both equally cause the tenure, enjoyment, or *holding* of the office to cease.

This being the case, the inference which has been drawn, fails. There is no ground for the presumption, that the Constitution, in establishing the tenure of an office, had an exclusive eye to one only of the two modes in which it might be effected. The more rational supposition is, that it intended to reach and exclude both; because, this alone can fulfil the purpose which it appears to have in view: and it ought neither to be understood to aim at less than its language imports, nor to employ inadequate means for accomplishing the end which it professes. Or, the better to elucidate the idea, by placing it in another form, it may be said, that, since in the nature of things the legislative, equally with the executive organ, may by different modes of action affect the tenure of office; when the Constitution undertakes to prescribe what that tenure shall be, it ought to be presumed to intend to guard that which shall have been prescribed, against the interference of either department.

In an instrument, abounding with examples of restrictions on the legislative discretion, there is no difficulty in supposing that one was intended, in every case in which it may be fairly inferred, either from the words used, or from the object to be effected.

While the reason which has been stated, refers the provision respecting the tenure of judicial officers as well to the execu-

tive as to the Legislative Department, were it necessary to examine to which, if to either of them, it ought to be deemed most appropriate, there could be no difficulty in selecting the latter, rather than the former. The *tenure* of an office is one of its essential *qualities*. A provision, therefore, which is destined to prescribe or define this quality, may be supposed to have a more peculiar reference to that Department, which is empowered to constitute the office; either as directory to it, in the exercise of its power, or as fixing what otherwise would be left to its discretion.

It is constantly to be recollected, that the terms of the provision do not look particularly to either Department. They are general, "the judges shall hold their offices during good behavior." 'Tis not from the terms, therefore, that an exclusive applicability to the executive organ can be inferred. On the contrary, they must be narrowed, to give them only this effect.

It is different as to the provision concerning compensations. Though equally general in the terms, this can have no relation but to the Legislative Department; *because*, as before observed, that department alone would have had power to diminish the compensations. But this reason for confining that provision to one department, namely, the power of affecting the compensations, so far from dictating a similar appropriation of the other provision, looks a different way, and requires by analogy that the latter should be applied to both the departments, each having a power of affecting the tenure of office, in a way peculiar to itself. Nor can it be too often repeated, because it is a consideration of great force, that the design, so conspicuous in the former of these two provisions, to secure the independence of the judges against legislative influence, is a powerful reason for understanding the latter in a sense calculated to advance the same important end, rather than in one which must entirely frustrate it.

A rule of constitutional law opposed to our construction, is attempted to be derived, from the maxim, that the power of legislation is always equal; and that a preceding can never bind or control a succeeding legislature, by its acts, which therefore

must always be liable to repeal at the discretion of the successor.

The misapplication, or too extensive application of general maxims or propositions, true in their genuine sense, is one of the most common and fruitful sources of false reasoning. This is strongly exemplified in the present instance. The maxim relied upon, can mean nothing more, than, that as to all those matters which a preceding legislature was free to establish and revoke, a succeeding legislature will be equally free. The latter may do what the former could have done, or it may undo what the former could have undone. But unless it can be maintained, that the power of ordinary legislation is in itself illimitable, incontrollable, incapable of being bound either by its own acts, or by the injunctions or prohibitions of a Constitution, it will follow, that the body invested with that power, may bind itself, and may bind its successor; so that neither itself nor its successor can, of right, revoke acts which may have been once done. To say that a legislature may bind itself, but not its successor, is to affirm that the latter has not merely an equal, but a greater power than the former, else it could not do what the former was unable to do. Equality of power only will not suffice for the argument. On the other hand, to affirm that a legislature cannot bind itself, is to assert, that there can be no valid pledge of the public faith, that no right can be vested in an individual or collection of individuals, whether of property, or of any other description, which may not be resumed at pleasure.

Without doubt, a legislature binds itself, by all those acts which engage the public faith; which confer on individuals permanent rights, either gratuitously or for valuable consideration; and in all these instances a succeeding one is not less bound. As to a right which may have been conferred by an express provision of the Constitution defining the condition of the enjoyment; or as to an institution or matter in its nature permanent, which the Constitution may have confided to an act of the legislature; its authority terminates with the act that vests the right or makes the establishment. A case of the first sort is exemplified in the office of a judge; of the last, in the creation of a new

state, which has been very pertinently mentioned as a decisive instance of power in a legislature, to do a thing which being done is irrevocable.

But whatever may be the latitude we assign to the power of a legislature over the acts of a predecessor, it is nothing to the purpose, so long as it shall be admitted that the Constitution may bind and control the legislature. With this admission, the simple inquiry must always be—has or has not the Constitution, in the particular instance, bound the legislature? And the solution must be sought in the language, nature, and end of the provision. If these warrant the conclusion, that the legislature was intended to be bound, it is perfect nonsense to reply, that this cannot be so because a legislature cannot bind itself by its own acts; or because the power of one legislature is equal to that of another. What signifies this proposition, if the Constitution has power to bind the legislature, and has in fact bound it in a given case? Can a general rule disprove the fact of an exception which it is admitted may exist? If so, the argument is always ready, and equally valid to disprove any limitation of the legislative discretion.

Compelled, as they must be, to desist from the use of the argument in the extensive sense in which it has been employed, if its inventors should content themselves with saying, that at least, the principle adduced by them ought to have so much of force, as to make the exception to it depend on an express provision—it may be answered, that in the case under consideration, there is an express provision. No language can be more precise or peremptory than this, "The judges, *both* of the Supreme and Inferior Courts, shall hold their offices during good behavior." If this be not an express provision, it is impossible to devise one. But the position, that an express provision is necessary to form an exception, is itself unfounded. Wherever it is clear, whether by a circumstance expressed, or by one so implied as to leave no reasonable doubt, that a limitation of the authority of the legislature was designed by the Constitution, the intention ought to prevail.

A very strong confirmation of the true intent of the provision

respecting the tenure of Judicial office, results from an argument by analogy. In each of the articles which establishes any branch of the government, the duration of office is a prominent feature. Two years for the House of Representatives, six for the Senate, four for the President and Vice-President, are the respective terms of duration; and for the Judges, the term of good behavior is allotted. It is presumable, that each was established in the same spirit, as a point material in the organization of the government and of a nature to be properly fundamental. It will not be pretended that the duration of office prescribed as to any other department, is within the reach of legislative discretion. And why shall that of Judicial officers form an exception? Why shall the Constitution be supposed less tenacious of securing to this organ of the sovereign power a fixed duration than to any other? If there be any thing which ought to be supposed to be peculiarly excepted out of the power of the ordinary Legislature, it is emphatically the organization of the several constituent departments of the government; which in our system are the *Legislative*, *Executive*, and *Judiciary*. Reasons of the most cogent nature recommend, that the stability and independence of the last of these three branches, should be guarded with particular circumspection and care.

LUCIUS CRASSUS.

NO. XIV.

March 2d, 1802.

In the course of the debate in the Senate, much verbal criticism has been indulged: many important inferences have been attempted to be drawn from distinctions between the words *shall* and *may*. This species of discussion will not be imitated, because it is seldom very instructive or satisfactory. These terms, in particular cases, are frequently synonymous, and are imperative or permissive, directing or enabling, according to the relations in which they stand to other words It is, however, certain, that

the arguments even from this source, greatly preponderate against the right of Congress to abolish the Judges.

But there has been one argument, rather of a verbal nature, upon which some stress has been laid, which shall be analyzed; principally to furnish a specimen of the wretched expedients to which the supporters of the repeal are driven. It is this, "The tenure of an office is not synonymous with its existence. Though Congress may not annul the tenure of a Judicial office, while the office itself continues; yet it does not follow that they may not destroy its existence."

The constituent parts of an office are its authorities, duties, and duration. These may be denominated the elements of which it is composed. Together they form its *essence* or *existence*.* It is impossible to separate even in idea the duration from the existence: the office must cease to exist when it ceases to have duration. Hence let it be observed, that the word *tenure* is not used in the Constitution, and that in the debate it has been the substitute for duration. The words, "The judges shall hold their offices during good behavior," are equivalent to these other words; The offices of the judges shall endure or last so long as they behave well.

The conclusions from these principles are, that existence is a *whole*, which includes tenure and duration as a part; that it is impossible to annul the existence of an office without destroying its tenure; and consequently that a prohibition to destroy the tenure is virtually and substantially a prohibition to abolish the office. How contemptible then the sophism that Congress may not destroy the tenure, but may annihilate the office!

It has now been seen, that this power of annihilation is not reconcilable with the language of the constitutional instrument, and that no rule of constitutional law, which has been relied upon, will afford it support. Can it be better defended by any principle of constitutional policy?

To establish the affirmative of this question, it has been ar-

* The remuneration or recompense is not added, because it is most properly an accessory.

gued, that if the judges hold their offices by a title absolutely independent of the legislative will, the judicial department becomes a colossal and overbearing power, capable of degenerating into a permanent tyranny; at liberty, if audacious and corrupt enough, to render the authority of the legislature nugatory, by expounding away the laws, and to assume a despotic control over the rights of person and property.

To this argument (which supposes the case of a palpable abuse of power) a plain and conclusive answer is, that the Constitution has provided a complete safeguard in the authority of the *House of Representatives* to impeach; of the *Senate* to condemn. The judges are in this way amenable to public justice for misconduct; and upon conviction, removable from office. In the hands of the legislature itself, is placed the weapon by which they may be put down and the other branches of the government protected. The pretended danger, therefore, is evidently imaginary—the security perfect.

Reverse the medal. Concede to the legislature a legal discretion to abolish the judges; where is the defence? where the security for the judicial department? There is absolutely none. This most valuable member of the government, when rightly constituted the surest guardian of person and property, of which stability is a prime characteristic; losing at once its most essential attributes, and doomed to fluctuate with the variable tide of faction, degenerates into a disgusting mirror of all the various, malignant, and turbulent humors of party spirit.

Let us not be deceived. The real danger is on the side of that foul and fatal doctrine, which emboldens its votaries, with daring front and unhallowed step, to enter the holy temple of justice, and pluck from their seats the venerable personages, who, under the solemn sanction of the Constitution, are commissioned to officiate there—to guard that sacred compact with jealous vigilance: to dispense the laws with a steady and impartial hand—unmoved by the storms of faction, unawed by its powers, unseduced by its favors—shielding right and innocence from every attack—resisting and repressing violence from every quarter. 'Tis from the triumph of that execrable doctrine, that we

may have to date the downfall of our government, and with it, of the whole fabric of republican liberty. Who will have the folly to deny that the definition of despotism is the concentration of all the powers of government in one person or in one body? Who is so blind as not to see, that the right of the legislature to abolish the judges at pleasure, destroys the independence of the judicial department, and swallows it up in the impetuous vortex of legislative influence? Who is so weak as to hope that the executive, deprived of so powerful an auxiliary, will long survive? What dispassionate man can withstand the conviction that the boundaries between the departments will be thenceforth nominal; and that there will be no longer more than one active and efficient department?

It is a fundamental maxim of free government, that the three great departments of power, *legislative*, *executive*, and *judiciary*, shall be essentially distinct and independent, the one of the other. This principle, very influential in most of our State constitutions, has been particularly attended to in the Constitution of the United States; which, in order to give effect to it, has adopted a precaution peculiar to itself, in the provisions that forbid the legislature to vary in any way the compensation of the *President*, to diminish that of a *judge*.

It is a principle equally sound, that though in a government like that of Great Britain, having an hereditary chief with vast prerogatives, the danger to liberty, by the predominance of one department over the other, is on the side of the executive; yet in popular forms of government, this danger is chiefly to be apprehended from the legislative branch.

The power of legislation is, in its own nature, the most comprehensive and potent of the three great subdivisions of sovereignty. It is the will of the government; it prescribes universally the rule of action, and the sanctions which are to enforce it. It creates and regulates the public force, and it commands the public purse. If deposited in an elective representative of the people, it has, in most cases, the body of the nation for its auxiliary, and generally acts with all the momentum of popular favor. In every such government it is consequently an organ of immense

strength. But when there is an hereditary chief magistrate, clothed with dazzling prerogatives and a great patronage, there is a powerful counterpoise, which, in most cases, is sufficient to preserve the equilibrium of the government; in some cases, to incline the scale too much to its own side.

In governments wholly popular or representative, there is no adequate counterpoise. Confidence in the most numerous, or legislative department, and jealousy of the executive chief, form the genius of every such government. That jealousy, operating in the constitution of the executive, causes this organ to be intrinsically feeble; and, withholding in the course of administration accessory means of force and influence, is for the most part vigilant to continue it in a state of impotence. The result is that the legislative body, in this species of government, possesses additional resources of power and weight; while the executive is rendered much too weak for competition; almost too weak for self-defence.

A third principle, not less well founded than the other two, is that the judiciary department is naturally the weakest of the three. The sources of strength to the legislative branches have been briefly delineated. The Executive, by means of its several active powers, of the dispensation of honors and emoluments, and of the direction of the public force, is evidently the second in strength. The judiciary, on the other hand, can ordain nothing. It commands neither the purse nor the sword. It has scarcely any patronage. Its functions are not active but deliberative. Its main province is to declare the meaning of the laws; and in extraordinary cases, it must even look up to the Executive aid for the execution of its decisions. Its chief strength is in the veneration which it is able to inspire by the wisdom and rectitude of its judgments.

This character of the judiciary clearly indicates that it is not only the weakest of the three departments of power, but, also, as it regards the security and preservation of civil liberty, by far the safest. In a conflict with the other departments, it will be happy if it can defend itself—to annoy them is beyond its power. In vain would it singly attempt enterprises against the rights of

the citizen. The other departments could quickly arrest its arm, and punish its temerity. It can only then become an effectual instrument of oppression, when it is combined with one of the more active and powerful organs; and against a combination of this sort, the true and best guard is a complete independence of each and both of them. Its dependence on either will imply and involve a subserviency to the views of the department on which it shall depend. Its independence of both will render it a powful check upon the others, and a precious shield to the rights of persons and property. Safety, liberty, are therefore inseparably connected with the real and substantial independence of the courts and judges.

It is plainly to be inferred from the instrument itself, that these were governing principles in the formation of our Constitution: that they were in fact so, will hereafter be proved by the cotemporary exposition of persons who, having been themselves members of the body that framed it, must be supposed to have understood the views with which it was framed. Those principles suggest the highest motives of constitutional policy against that construction which places the existence of the judges at the mercy of the legislature. They instruct us, that to prevent a concentration of powers, *the essence of despotism*, it is essential, that the departments among which they shall be distributed, should be effectually independent of each other; and that, it being impossible to reconcile this independence with a right in any one or two of them to annihilate at discretion the organs of the other, it is contrary to all just reasoning to imply or infer such a right. So far from its being correct, that an *express* interdiction is requisite to deprive the legislature of the power to abolish the judges, the very reverse is the true position. It would require a more express provision susceptible of no other interpretation, to confer on that branch of the government an authority, so dangerous to the others, in opposition to the strong presumptions, which arise from the care taken in the Constitution, in conformity with the fundamental maxims of free governments, to establish and preserve the reciprocal and complete independence of the respective branches, first by a sep-

arate organization of the departments; next by a precise definition of the powers of each; lastly by precautions to secure to each a permanent support.

LUCIUS CRASSUS.

NO. XV.

March, 1802.

It is generally understood that the Essays under the title of the Federalist, which were published at New-York, while the plan of our present federal Constitution was under the consideration of the people, were principally written by two persons* who had been members of the convention which devised that plan, and whose names are subscribed to the instrument containing it. In these essays† the principles advanced in the last number of this examination are particularly stated and strongly relied upon, in defence of the proposed Constitution; from which it is a natural inference that they had influenced the views with which the plan was digested. The full force of this observation will be best perceived by a recurrence to the work itself; but it will appear clearly enough from the following detached passages.

"One of the principal objections inculcated by the more respectable *adversaries* to the Constitution, is its supposed violation of the political maxim, that the *legislative*, *executive*, and *judiciary* departments ought to be *separate* and *distinct*. No *political truth* is certainly of *greater intrinsic value*, or is stamped with the authority of more enlightened patrons of liberty, than that on which the objection is founded. The *accumulation* of all power, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many; whether hereditary, self-appointed or elective, may justly be pronounced the *very de-*

* James Madison, now Secretary of State. Alexander Hamilton, formerly Secretary of the Treasury.

† Particularly Nos. xlvii. to li. inclusive, and Nos. lxxviii. to lxxxii. inclusive.

*finition of tyranny.** Neither of the three departments ought to possess *directly* or *indirectly* an *overruling influence* over the others in the administration of their respective powers." "But the most difficult task is to provide some *practical security* for each, *against the invasion* of the others. Experience assures us that the efficacy of *parchment barriers* has been greatly overrated, and that some *more adequate defence is indispensably necessary* for the more feeble against the more powerful members of the government. The legislative department is every where extending the sphere of its activity, and drawing all power into its impetuous vortex." "In a representative republic, where the executive magistracy is carefully limited, both in the extent and the duration of its power; and where the legislative power is exercised by an assembly, which is inspired by a supposed influence over the people with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude; yet not so numerous as to be incapable of pursuing the objects of its passions by means which reason prescribes; *it is against the enterprising ambition of this department, that the people ought to indulge all their jealousy and exhaust all their precaution.*" Again, "The *tendency* of republican governments is to an *aggrandizement of the legislative at the expense of the other departments.*"

These passages recognize, as a fundamental maxim of free government, that the three departments of power ought to be separate and distinct; consequently that neither of them ought to be able to exercise, either directly or indirectly, an *overruling influence* over any other. They also recognize as a truth, indicated by the nature of the system and verified by experience, that in a representative republic, the legislative department is the "AARON'S ROD" most likely to swallow up the rest, and therefore to be guarded against with particular care and caution: and they inculcate that parchment barriers (or the formal provisions of a Constitution designating the respective boundaries of authority), having been found ineffectual for protecting the more feeble,

* No. xlvii.

against the more powerful members of the government, some more adequate defence, some practical security, is necessary. What this was intended to be, will appear from subsequent passages.

"To what expedient shall we finally resort for maintaining in practice the necessary partition of power among the several departments as laid down in the Constitution?" "As all exterior provisions are found to be inadequate, the defect must be supplied by so contriving the interior structure of the government, as that its several constituent departments may, by their mutual relations, be the means of keeping each other in their proper places."*

These passages intimate the "*practical security*" which ought to be adopted for the preservation of the weaker against the stronger members of the government. It is so to be contrived in its interior structure that the constituent organs may be able to *keep each other* in their *proper places;* an idea essentially incompatible with that of making the *existence* of one dependent on the *will* of another. It will be seen afterwards, how this structure is to be so contrived.

"In order to lay a *foundation* for that separate and distinct exercise of the different powers of government, which, to a certain extent, is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted, that the members of each should have *as little agency* as possible in the appointment of the members of the others. This principle rigorously adhered to, would require that all the appointments for the several departments should be drawn from the same fountain of authority, the people." But in the constitution of the judiciary department, it might be inexpedient to insist rigorously on the principle; first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice, which best secures these qualifications; secondly, because *the permanent tenure* by which the appointments are held

* No. li.

in that department, must soon destroy all sense of dependence on the authority conferring them.

"It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the Executive Magistrate or the *judges* not independent of the *legislature* in this particular, *their independence in every other* would be merely nominal." "The great security against a concentration of the several powers in the same department, consists in giving to those who administer each department the *necessary constitutional means and personal motives* to resist encroachments of the others." "But it is not possible to give to each department an equal power of self-defence. In republican governments the legislative authority necessarily predominates."

The means held out as proper to be employed, for enabling the several departments to keep each other in their proper places, are: 1. To give to each such an *organization* as will render them essentially independent of one another. 2. To secure to each a *support* which shall not be at the discretionary disposal of any other. 3. To establish between them such *mutual relations of authority*, as will make one a check upon another, and enable them reciprocally to resist encroachments, and confine one another within their proper spheres.

To accomplish the first end, it is deemed material that they should have as little agency as possible in the appointment of one another, and should all emanate directly from the same fountain of authority—the people. And that it being expedient to relax the principle, in respect to the judiciary department, with a view to a more select choice of its organs—this defect in the creation ought to be remedied by a *permanent tenure* of office; which certainly becomes nominal and nugatory, if the existence of the office rests on the pleasure of the legislature. The principle that the several organs should have as little agency as possible in the appointment of each other, is directly opposed to the claim in favor of one of a discretionary agency to destroy another. The second of the proposed ends is designed to be effected by the provisions for fixing the compensations of the executive and

judicial departments. The third, by the qualified negative of the executive on the acts of the two houses of Congress; by the right of one of these houses to accuse; of the other to try and punish the executive and judicial officers; and lastly, by the right of the judges, as interpreters of the laws, to pronounce unconstitutional acts void.

These are the means contemplated by the Constitution for maintaining the limits assigned to itself, and for enabling the respective organs of the government to keep each other in their proper places, so that they may not have it in their power to domineer the one over the other, and thereby in effect, though not in form, to concentrate the powers in one department, overturn the government, and establish a tyranny. Unfortunate, if these powerful precautions shall prove insufficient to accomplish the end, and stem the torrent of the impostor INNOVATION, disguised in the specious garb of *patriotism!*

The views which prevailed in the formation of the Constitution are further illustrated by these additional comments from the same source.*

"As liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; as from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed or influenced by its co-ordinate branches; and as nothing can contribute so much to its firmness and independence as *permanency in office*, this quality may therefore be justly regarded as an indispensable ingredient in its Constitution; and in a great measure as the citadel of the public justice and the public security."

"The complete independence of the courts of justice is peculiarly essential in a limited Constitution. Limitations can be preserved in practice no other way, than through the medium of the courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void."

* No. lxxviii.

Then follows a particular discussion of the position, that it is the right and the duty of the courts to exercise such an authority: to repeat which, would swell this number to an improper size.

The essence of the argument is, that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void; consequently that no legislative act, inconsistent with the Constitution, can be valid. That it is not a natural presumption that the Constitution intended to make the legislative body the final and exclusive judges of their own powers; but more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the bounds assigned to its authority: that the interpretation of the laws being the peculiar province of the courts, and a *Constitution* being in fact a *fundamental law*, superior in obligation to a *statute*, if the Constitution and the statute are at variance, the former ought to prevail against the latter; the will of the people against the will of the agents; and the judges ought in their quality of interpreters of the laws, to pronounce and adjudge the truth, namely, that the unauthorized statute is a nullity.

"Nor (continues the commentator) does this conclusion by any means suppose a *superiority* of the judicial to the legislative power. It only supposes that the power of the *people* is superior to both; and that where the will of the *legislature* declared in its *statute*, stands in opposition to that of the *people* declared in the *Constitution*, the judges ought to be governed by the latter, rather than the former. They ought to regulate their decisions by the *fundamental laws*, rather than by those which are *not fundamental*."

"If, then, the courts of justice are to be considered as the *bulwarks* of a limited *Constitution* against *legislative encroachments*, this consideration will afford a strong argument for the permanent tenure of judicial offices."

But no proposition can be more manifest than that this permanency of tenure must be nominal, if made defeasible at the pleasure of the legislature; and that it is ridiculous to consider

it as an obstacle to encroachments of the legislative department, if this department has a discretion to vacate or abolish it directly or indirectly.

In recurring to the comments which have been cited, it is not meant to consider them as evidence of any thing but of the views with which the Constitution was framed. After all, the Instrument must speak for itself. Yet, to candid minds, the cotemporary explanation of it, by men, who had had a perfect opportunity of knowing the views of its framers, must operate as a weighty collateral reason for believing the construction agreeing with this explanation to be right, rather than the opposite one. It is too cardinal a point, to admit readily the supposition that there was misapprehension; and whatever motives may have subsequently occurred to bias the impressions of the one or the other of the persons alluded to, the situation in which they wrote, exempts both from the suspicion of an intention to misrepresent in this particular. Indeed a course of argument more accommodating to the objections of the adversaries of the Constitution would probably have been preferred as most politic, if the truth, as conceived at the time, would have permitted a modification. Much trouble would have been avoided by saying, "The legislature will have a complete control over the judges, by the discretionary power of reducing the number of those of the Supreme Court, and of abolishing the existing judges of the inferior courts, by the abolition of the courts themselves." But this pretension is a novelty reserved for the crooked ingenuity of after discoveries.

LUCIUS CRASSUS.

NO. XVI.

March 19, 1802.

The President, as a politician, is in one sense particularly unfortunate. He furnishes frequent opportunities of arraying him

against himself—of combating his opinions at one period, by his opinions at another. Without doubt, a wise and good man may, on proper grounds, relinquish an opinion which he has once entertained, and the change may even serve as a proof of candor and integrity. But with such a man, changes of this sort, especially in matters of high public importance, must be rare. The contrary is always a mark, either of a weak and versatile mind, or of an artificial and designing character; which, accommodating its creed to circumstances, takes up or lays down an article of faith, just as may suit a present convenience.

The question in agitation, respecting the Judiciary Department, calls up another instance of opposition between the former ideas of Mr. Jefferson, and his recent conduct. The leading positions which have been advanced, as explanatory of the policy of the Constitution in the structure of the different departments, and as proper to direct the interpretation of the provisions, which were contrived to secure the independence and firmness of the judges, are to be seen in a very emphatical and distinct form, in the Notes on Virginia. The passage in which they appear, deserves to be cited at length, as well for its intrinsic merit, as by way of comment upon the true character of its author; presenting an interesting contrast between the maxims, which experience had taught him while Governor of Virginia, and those which now guide him as the official head of a great party in the United States. It is in these words:—

"All the powers of government, legislative, executive, and judiciary, result to the legislative body. The *concentrating* these in the same hands, is precisely the definition of *despotic government.* It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. *One hundred and seventy-three despots would surely be as oppressive as one.* Let those who doubt it, turn their eyes on the Republic of Venice. As little will it avail us that they are chosen by ourselves. An *elective despotism* was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one

could transcend their legal limits without being effectually *checked* and *restrained* by the others. For this reason, that Convention which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive, and judiciary departments, should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. *But no barrier was provided between these several powers.* The *judiciary* and executive members were left *dependent on the legislative* for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made,—nor if made, can be effectual; because in that case, they may put their proceedings into the form of an act of assembly, which will render them obligatory on the other branches. They have accordingly *in many instances decided rights* which should have been left to *judiciary controversy;* and *the direction of the Executive, during the whole time of their session, is becoming habitual and familiar.*"

This passage fully recognizes these several important truths: that the tendency of our governments is towards a CONCENTRATION of the POWERS of the different departments in the LEGISLATIVE BODY; that such a CONCENTRATION, is precisely the DEFINITION of DESPOTISM, and that an effectual *barrier* between the respective departments ought to exist. It also, by a strong implication, admits that officers during *good behavior* are independent of their legislature for their continuance in office. This implication seems to be contained in the following sentence: "The judiciary and executive members were left dependent on the legislature for their subsistence in office, and *some* of them *for their continuance in it.*" The word "*some,*" implies that *others* were not left thus dependent; and to what description of officers can the exception be better applied than to the judges, the tenure of whose offices was *during good behavior?*

The sentiments of the President, delivered at a *period* when he can be supposed to have been under no improper bias, must be regarded by all those who respect his judgment, as no light evidence of the truth of the doctrine for which we contend. Let

us, however, resume and pursue the subject on its merits, without relying upon the aid of so variable and fallible an authority.

At an early part of the discussion in this examination, a construction of the Constitution was suggested, to which it may not be amiss to return. It amounts to this, that Congress have power to new-model, or even to abrogate an Inferior Court, but not to abolish the office or emoluments of a judge of such court previously appointed. In the Congressional debates, some of the speakers against the repealing law, appear to have taken it for granted, that the *abrogation of the court must draw with it the abolition of the judges*, and therefore have denied in totality, the power of abrogation. In the course of these papers, too, it has been admitted, that if the preservation of the judges cannot be reconciled with the power to annul the court, then the existence of this power is rightly denied. But in an affair of such vast magnitude, it is all-important to survey with the utmost caution, the ground to be taken, and then to take and maintain it with inflexible fortitude and perseverance. Truth will be most likely to prevail, when the arguments which support it, stop at a temperate mean, consistent with practical convenience. Excess is always error. There is hardly any theoretic hypothesis, which, carried to a certain extreme, does not become practically false. In construing a Constitution, it is wise, as far as possible to pursue a course, which will reconcile essential principles with convenient modifications. If guided by this spirit, in the great question which seems destined to decide the fate of our government, it is believed that the result will accord with the construction, that *Congress have a right to change or abolish inferior courts, but not to abolish the actual judges.*

Towards the support of this construction, it has been shown in another place, that the courts and the judges are distinct legal *entities*, which, in contemplation of law, may exist, independently the one of the other—mutually related, but not inseparable. The act proposed to be repealed exemplifies this idea in practice. It abolishes the District Courts of Tennessee and Kentucky, and transfers their judges to one of the Circuit Courts. Though the authorities and jurisdiction of those courts are vested in the Cir-

cuit Court, to which the judges are transferred; yet the *identity of the courts* ceases. It cannot be maintained that courts, so different in their organization and jurisdiction, are the same; nor could a legislative transfer of the judges have been constitutional, but upon the hypothesis, that the office of a judge may survive the court of which he is a member. A *new appointment* by the Executive, of two additional judges for the Circuit Court, *would otherwise have been necessary.*

This precedent in all its points, is correct, and exhibits a rational operation of the construction, which regards the office of the judge, as distinct from the court; as one of the elements, or constituent parts, of which it is composed; not as a mere incident that must perish with its principal.

It will not be disputed, that the Constitution *might* have provided *in terms*, and with effect, that an Inferior Court which had been *established by law*, might by law be abolished, so, nevertheless, that the judges of such court should retain the offices of judges of the United States with the emoluments before attached to their offices. The operation of such a provision would be, that when the court was abolished, all the functions to be executed in that court would be suspended, and the judge could only continue to exert the authorities and perform the duties, which might before have been performed, without reference to causes *pending in court;* but he would have the capacity to be annexed to another court, without the intervention of a new appointment, and by that annexation, simply to *renew* the exercise of the authorities and duties which had been *suspended.*

If this might have been the effect of positive and explicit provision, why may it not likewise be the *result* of provisions, which, presenting opposite considerations, point to the same conclusion: as a compromise calculated to reconcile those considerations with each other and to unite different objects of public utility? Surely the affirmative infringes no principle of legal construction; transgresses no rule of good sense.

Let us then inquire, whether there are not in this case opposite and conflicting considerations, *demanding* a compromise of this nature? On the one hand, it is evident, that if an inferior

court once instituted, though found inconvenient, cannot be abolished, this is to entail upon the community the mischief, be it more or less, of a first error in the administration of the government: on the other hand, it is no less evident, that if the judges hold their offices at the discretion of the legislature, they cease to be a co-ordinate, and become a dependent branch of the government; from which *dependence*, mischiefs infinitely greater are to be expected.

All these mischiefs, the lesser as well as the greater, are avoided by saying, "*Congress may abolish the courts, but the judges shall retain their offices with the appertinent emoluments.*" The only remaining inconvenience then, will be one too insignificant to weigh in a national scale, that is, the expense of the compensations of the incumbents during their lives. The future and permanent expense will be done away.

But will this construction secure the benefits intended by the Constitution to be derived from the INDEPENDENT TENURE OF JUDICIAL OFFICE?—Substantially it will.—The main object is to preserve the judges from being influenced by an apprehension of the loss of the advantages of office. As this loss could not be incurred, that influence would not exist. Their firmness could not be assailed by the danger of being superseded, and perhaps *consigned to want.* Let it be added, that when it was once understood not to be in the power of the legislature to deprive the judges of their offices and emoluments, it would be a great restraint upon the *factious motives*, which might induce the *abolition of a court.* This would be much less likely to happen unless for genuine reasons of public utility; and of course there would be a much better prospect of the stability of judiciary establishments.

LUCIUS CRASSUS.

NO. XVII.

March 20, 1802.

It was intended to have concluded the argument respecting the Judiciary Department with the last number. But a speech* lately delivered in the House of Representatives, having since appeared, which brings forward one new position, and reiterates some others in a form well calculated to excite prejudice, it may not be useless to devote some further attention to the subject.

The new position is, that the clause of the Constitution, enabling the judges to hold their offices during good behavior, ought to be understood to have reference to the Executive only, BECAUSE ALL OFFICES ARE HOLDEN OF THE PRESIDENT!!

This is the second example of a doctrine contrary to every republican idea, broached in the course of this debate by the advocates of the repealing law.† Had a federalist uttered the sentiment, the cry of monarchy would have resounded from one extremity of the United States to the other. It would have been loudly proclaimed that the mask was thrown aside, by a glaring attempt to transform the servants of the people into the supple tools of Presidential ambition. But now, to justify a plain violation of the Constitution, and serve a party purpose, this bold and dangerous position is avowed without hesitation or scruple, from a quarter remarkable, chiefly, for the noisy promulgation of popular tenets.

The position is not correct; and it is of a nature to demand the indignant reprobation of every real republican. In the theory of all the American Constitutions, offices are holden of the Government, in other words, of the PEOPLE *through* the GOVERNMENT. The appointment is indeed confided to a particular organ, and in instances in which it is not otherwise provided by the Constitution or the laws, the removal of the officer is

* By Mr. Giles.

† The other is the denial of the right of the courts to keep the Legislature within its constitutional bounds by pronouncing laws which transgress them, inoperative.

left to the pleasure or discretion of that organ. But both these acts suppose merely an instrumentality of the organ, from the necessity or expediency of the people's acting in such case by an agent.—They do not suppose the substitution of the agent to the people, as the object of the fealty or allegiance of the officer.

It is said that the word *holden* is a technical term denoting tenure, and implying that there is one who holds; another of whom the thing is holden. This assertion is indeed agreeable to the common use of the word in our law books. But it is hardly to be presumed that it was employed in the Constitution in so artificial a sense. It is more likely that it was designed to be the equivalent of the words *possess, enjoy.* Yet let the assertion be supposed correct.—In this case, it must also be remembered that the term in this *technical* sense includes two things, the quantity of interest in the subject holden, and the meritorious consideration upon which the grant is made; which in many cases includes service or rent, in all fealty; this last forming emphatically the link or tie between the lord and the tenant, the sovereign and the officer. Will any one dare to say that fealty or allegiance, as applied to the government of the United States, is due from the officer to the President? Certainly it is not. It is due to the people in their political capacity. If so, it will follow that the office is holden not of the President, but of the *Nation*, State or Government.

It is remarkable that the Constitution has every where used the language "Officers of the United States," as if to denote the relation between the officer and the sovereignty; as if to exclude the dangerous pretension that he is the mere creature of the executive; acccordingly, he is to take an oath to support the Constitution," that is, an oath of fidelity to the government; but no oath of any kind to the *President.*

In the theory of the British government, it is entirely different; there the majesty of the nation is understood to reside in the prince. He is deemed the real sovereign. He is, emphatically, the fountain of honor. Allegiance is due to him; and consequently, public offices are, in the true notion of *tenure*, holden of him. But in our Constitution the President is not the sovereign;

the sovereignty is vested in the government, collectively; and it is of the sovereignty, strictly and technically speaking, that a public officer holds his office.

If this view of the matter be just, the basis of the argument, in point of fact, fails; and the principle of it suggests an opposite conclusion, namely, that the condition of *good behavior* is obligatory on the whole government, and ought to operate as a barrier against any authority by which the displacement of the judges may be directly or indirectly effected.

In the same speech, much stress has been laid on the words "during *their* continuance *in* office," as implying that the compensation of the judge was liable to cease by a legislative discontinuance of the office. If the words had been, during *the continuance of the office*, the argument would have been pertinent—but as they stand, a different inference, if any, is to be drawn from them. They seem rather to relate to the continuance of the *officer* than to that of the *office*. But in truth, an inference either way—is a pitiful subtilty. The clause is neutral; its plain and simple meaning being, that the compensation shall not be diminished while the judge retains the office. It throws no light whatever on the question *how he may lawfully cease to possess it.*

Another point is pressed with great earnestness, and with greater plausibility. It is this, that the Constitution must have intended to attach recompense to service, and cannot be supposed to have meant to bestow compensation, where, in the opinion of the legislature, no service was necessary. Without doubt, the Constitution does contemplate service as the ground of compensation; but it likewise takes it for granted, that the legislature will be circumspect in the institution of offices; and especially, that it will be careful to establish none of a permanent nature, which will not be permanently useful. With this general presumption, the Constitution anticipates no material inconvenience from the permanency of judicial offices connected with permanent emoluments. And though it should have foreseen that cases might happen in which the service was not needed, yet there is no difficulty whatever in the supposition, that it was willing to encounter the trivial contingent evil of having to maintain a few superflu-

ous officers, in order to obtain the immense good, of establishing and securing the independence of the courts of justice. The readiness of the officer to render service at the will of the government is the consideration, as to him, for continuing the compensation. But the essential inducement is the public utility incident to the independency of the judicial character. As to the supposition of an enormous abuse of power, by creating a long list of sinecures, and a numerous host of pensioners; whenever such a thing shall happen, it will constitute one of those extreme cases, which, on the principle of necessity, may authorize extra-constitutional remedies. But these are cases which can never be appealed to for the interpretation of a Constitution, which, in meting out the powers of the government, must be supposed to adjust them on the presumption of a fair execution.

A further topic of argument is, that our doctrine would equally restrain the legislature from abolishing offices held during pleasure. But this is not true. The two things stand on different ground. First, the executive has such an agency in the enacting of laws, that, as a general rule, the displacement of the officer cannot happen against his pleasure. Second, the pleasure of the President, in all cases not particularly excepted, is understood to be subject to the direction of the law. Third, an officer during pleasure, having merely a revocable interest, the abolition of his office is no infringement of his right. In substance, he is a tenant *at the will of the government*, liable to be discontinued by the executive organ, in the form of a removal; by the legislative, in the form of an abolition of the office. These different considerations reconcile the legislative authority to abolish, with the prerogative of the Chief Magistrate to remove, and with the temporary right of individuals to hold.—And therefore, there is no reason against the exercise of such an authority; nothing to form an exception to the *general competency of the legislative power to provide for the public welfare.* Very different is the case as to the judges. The most persuasive motives of public policy, the safety of liberty itself, require that the judges shall be independent of the legislative body; in order to maintain effectually the separation between the several departments. The provision that their compensation

shall not be diminished, is a clear constitutional indication, that their independence was intended to be guarded against the legislature. The express declaration that they shall hold their offices during good behavior, that is, upon a condition *dependent on themselves*, is repugnant to the hypothesis that they shall hold at the *mere pleasure of others*. Provisions which profess to confer rights on individuals, are always entitled to a liberal interpretation in support of the rights, and ought not, without necessity, to receive an interpretation subversive of them. Provisions which respect the organization of a co-ordinate branch of the government, ought to be construed in such a manner, as to procure for it stability and efficiency, rather than in such a manner as to render it weak, precarious, and dependent. These various and weighty reasons serve to establish strong lines of discrimination between judicial and other officers; and to prove, that no inference can be drawn from the power of the legislature as to the latter, which will be applicable to the former.

One more defence of this FORMIDABLE CLAIM is attempted to be drawn from the example of the judiciary establishment of Great Britain. It is observed, that this establishment, the theme of copious eulogy on account of the independence of the judges, places those officers upon a footing far less firm than will be that of the judges of the United States, even admitting the right of Congress to abolish their offices by abolishing the courts of which they are members. And as one proof of the assertion, it is mentioned, that the English judges are removable by the king, on the address of the two houses of parliament.

All this might be very true, and yet would prove nothing as to what is or ought to be the construction of our Constitution on this point. It is plain from the provision respecting compensation, that the framers of that Constitution intended to prop the independence of our judges, beyond the precautions which have been adopted in England in respect to the judges of that country; and the intention apparent in this particular, is an argument, that the same spirit may have governed other provisions. Cogent reasons have been assigned, applicable to our system, and not applicable to the British system, for securing the independence of our judges against the legislative, as well as against the executive power.

It is alleged that the statute of Great Britain of the 13 of William III. was the model from which the framers of our Constitution copied the provisions for the independence of our judiciary. It is certainly true, that the idea of the tenure of office during good behavior, found in several of our Constitutions, is borrowed from that source. But it is evident that the framers of our federal system did not mean to *confine* themselves to that model.—Hence the restraint of the legislative discretion, as to compensation; hence the omission of the provision for the removal of the judges by the executive, on the application of the two branches of the legislature; a provision which has been imitated in some of the State governments.

This very omission affords no light inference, that it was the intention to depart from the principle of making the judges removable from office, by the co-operation or interposition of the legislative body. Why else was this qualification of the permanent tenure of the office, which forms a conspicuous feature in the British statute, and in some of the State Constitutions, dropped in the plan of the federal government?

The insertion of it in the British statute, may also be supposed to have been dictated by the opinion, that without a special reservation, the words *during good behavior* would have imported an irrevocable tenure. If so, the precaution will serve to fortify our construction.

But, however it may seem in theory, in fact, the difference in the genius of the two governments would tend to render the independence of the judges more secure under the British statute, than it would be in this country, upon the construction which allows to Congress the right to abolish. The reason is this.—From the Constitution of the British monarchy, the thing chiefly to be apprehended is, an overbearing influence of the crown upon the judges. The jealousy of executive influence resting upon more powerful motives in that country, than in this, it may be expected to operate as a stronger obstacle there than here, to an improper combination between the executive and legislative departments to invade the judiciary. Moreover, the British executive has greater means of resisting parliamentary control, than

an American executive has of resisting the control of an American legislature; consequently, the former would be in less danger than the latter, of being driven to a concurrence in measures hostile to the independence of the judges. And in both these ways, there would be greater security for the British than for the American judges.

Thus is it manifest, that in every attitude in which the subject has been placed, the argument is victorious against the power of Congress to abolish the judges. But what, alas! avails the demonstration of this important truth? The fatal blow has been struck! It is no longer possible to arrest the rash and daring arm of power! Can the proof that it has acted without right, without warrant—can this heal the wound?—Can this renovate the perishing Constitution? Yes, let us hope that this will be the case. Let us trust that the monitory voice of true patriotism will at length reach the ears of a considerate people, and will rouse them to a united and vigorous exertion for the restoration of their VIOLATED CHARTER; not by means, either disorderly or guilty, but by means which the Constitution will sanction and reason approve. Surely this will be so.—A people, who, descrying tyranny at a distance, and guided only by the light of just principles, before they had yet felt the scourge of oppression, could nobly hazard all in the defence of their rights; a people, who, sacrificing their prejudices on the altar of experience, and spurning the artifices of insidious demagogues, could, as a deliberate act of national reason, adopt and establish for themselves a Constitution, which bid fair to immortalize their glory and their happiness: such a people, though misled for a period, will not be the final victims of a delusion, alike inauspicious to their reputation and to their welfare. They will not long forget the fame they have so justly merited, nor give the world occasion to ascribe to accident, what has hitherto been imputed to wisdom. They will disdain to herd with the too long list of degraded nations, who have bowed their necks to unworthy idols of their own creating—who, immolating their best friends, at the shrine of falsehood, have sunk under the yoke of sycophants and betrayers. They will open their eyes and see the precipice on which they

stand! They will look around and select from among the throng, the men who have heretofore established a claim to their confidence on the solid basis of able and faithful service; and they will, with indignation and scorn, banish from their favor the wretched impostors, who, with honeyed lips and guileful hearts, are luring them to destruction! Admonished by the past, and listening again to the counsels of real friends, they will make a timely retreat from the danger which threatens—they will once more arrange themselves under the banners of the Constitution—with anxious care will repair the breaches that have been made, and will raise new mounds against the future assaults of open or secret enemies!

LUCIUS CRASSUS.

NO. XVIII.

April 8th, 1802.

In order to cajole the people, the message abounds with all the commonplace of popular harangue, and prefers claims of merit, for circumstances of equivocal or of trivial value. With pompous absurdity are we told of the "*multiplication of men, susceptible of happiness,*" (as if this susceptibility were a privilege peculiar to our climate,) "*habituated to self-government, and valuing its blessings above all price.*" Fortunate will it be, if the present favorites of the people do not, before their reign is at an end, transform those blessings into curses, so serious and heavy, as to make even despotism a desirable refuge from the elysium of democracy.

In a country, the propensities of which are opposed even to necessary burdens, an alarm is attempted to be excited about the general tendency of government, "to leave to labor the *smallest* portion of its earnings on which it can subsist, and to *consume the residue* of what it was instituted to guard." It might have been well, to have explained whether it is the *whole* of the earnings of labor, which government is instituted to guard, or only the *resi-*

due after deducting what is *necessary to enable it* to fulfil the duty of protection. Representatives who share with their constituents in an excessive jealousy of executive abuses, are cantingly admonished to "circumscribe discretionary powers over money," though they are known to be already so limited, as that the Executive, even on the prospect of a rupture with a foreign power, would not possess the means of obtaining intelligence the most necessary for the proper direction of its measures. That the new administration has not boldly invaded the laws and withheld the funds applicable to the payment of the principal and interest of the public debt, is fastidiously proclaimed as *evidence* that "the public faith has been *exactly* maintained." The praise of a spirit of economy is attempted to be gained, by the suppression of a trifling number of officers, (a majority of whom had become unnecessary by the mere change of circumstances,) and by declaiming, with affectation, against "*the multiplication of officers and the increase of expense.*" The proposition to reduce our insignificant *military establishment* (the actual number of troops probably not exceeding that which is intended to be retained) cannot be suggested, without tickling our ears with the trite but favorite maxim, that "*a standing army ought not to be kept up in time of peace.*" To make a display of concern for their prosperity—agriculture, manufactures, commerce, and navigation, are introduced among the pageants of the piece; but, except as "to protection from *casual* embarrassments," we are sagaciously informed that these "GREAT PILLARS *of our prosperity*, ought to be left *to take care of themselves.*" The carying trade, however, seems to engage more solicitude; no doubt that we may be terrified by the expectation of future evils, from a much traduced instrument,* which *in time past*, has done nothing but good, in spite of the gloomy predictions of patriotic seers.

Such are the minor features of this curious performance. Had these been its only blemishes, a regard to national reputation would have forbidden a comment; but connected as they are with schemes of innovation replete with great present mischief,

* The treaty with Great Britain.

and still greater future danger; designed as they are to varnish over projects which threaten to precipitate our nation from an enviable height of prosperity to that low and abject state, from which it was raised by the establishment and wise administration of our present government—they become entitled to notice as additional indications of character and disposition.

The merits of the message have now been pretty fully discussed; but before it is dismissed, it may be useful to take a view of it in another and a different light; as one link in a chain of testimony, which the force of circumstances, at every step of the new administration, extorts from them, in favor of their predecessors.

The President, on the threshold of office, at the first opportunity of speaking to his constituents, in his very inaugural speech; full of a truth, which the most rancorous prejudice cannot ob scure, and not sufficiently reflecting on the inferences which would be drawn, proclaims aloud to the world, that a government, which he had disapproved in its institution and virulently opposed in its progress, was in THE FULL TIDE OF SUCCESSFUL EXPERIMENT. In the last address he again unconsciously becomes the panygerist of those whom he seeks to depreciate. The situation in which (humanly speaking) we have been preserved by the prudent and firm councils of the preceding administrations, amidst the revolutionary and convulsive throes, amidst the desolating conflicts of Europe, is there a theme of emphatic gratulation. It shall not be forgotten, as the solitary merit of the address, that we are reminded of the *gratitude due to Heaven* for the blessings of this situation. Amidst the spurious symptoms of a spirit of reform, it is consoling to observe one, which, in charity, ought to be supposed genuine. But it would not have diminished our conviction of its sincerity, if the instruments of Providence in the accomplishment of the happy work, had not been entirely overlooked; since this would have been evidence of a willingness to acknowledge and retract error—to make reparation for injury. But though they have been overlooked by the message, the American people ought never for a moment to forget them. Their efforts and their struggles, their moderation

and their energy, their care and their foresight; the mad and malignant opposition of their political adversaries; the charges of pusillanimity and perfidy lavished on the declaration of neutrality; the resistance to measures for avoiding a rupture with Great Britain; the attempt to rush at once into reprisals; the cry for war with the enemies of France, as the enemies of republican liberty; all these things should be for ever imprinted on the memory of a just and vigilant nation. And in recollecting them, they should equally recollect that the opposers of the salutary plans to which they are so much indebted, were and are the zealous partisans of the present head of our government; who have at all times submitted to his influence and implicitly obeyed his nod; who never would have pursued with so much vehemence the course they did, had they known it to be contrary to the views of their chief: nor should it be forgotten that this chief, in the negotiation with the British minister, conducted by him as Secretary of State, acted precisely as if it had been his design to widen, not to heal the breach between the two countries; that he at first *objected* to the declaration of neutrality; was afterwards reluctantly dragged into the measures connected with it; was believed by his friends not to approve the system of conduct, of which he was the official organ; was publicly and openly accused by the then agent of the French republic with duplicity and deception, with having been the first to inflame his mind with ill impressions of the principles and views of leading characters in our government, not excepting the revered WASHINGTON; that this chief, at a very critical period of our affairs in reference to the war of Europe, withdrew from the direction of that department peculiarly charged with the management of our foreign relations, evidently to avoid being more deeply implicated in the consequences of the position, which had been assumed by the administration; but on the hollow pretence of a dislike to public life and a love of philosophic retirement. Citizens of America, mark the sequel and learn from it instruction! You have been since agitated to the centre, to raise to the first station in your government the very man who, at a conjuncture when your safety and your welfare demanded his stay, early re-

linquished a subordinate, but exalted and very influential post, on a pretence as frivolous as it has proved to be insincere! Was *he*, like the virtuous Washington, forced from a beloved retreat, by the unanimous and urgent call of his country? No; he stalked forth the champion of faction—having never ceased in the shade of his retreat, by all the arts of intrigue, to prepare the way to that elevation, for which a restless ambition impatiently panted.

The undesigned eulogy of the men *who have been slandered out of the confidence of their fellow-citizens,* has not been confined to the situation of the country as connected with the war of Europe. In the view given of the very flourishing state of our finances, the worst of the calumnies against those men is refuted, and it is admitted, that in this article of vital importance to the public welfare, their measures have been provident and effectual beyond example. To the charge of a design to saddle the nation with a perpetual debt, a plain contradiction is given by the concession, that the provisions which have been made for it are so ample, as even to justify the relinquishment of a part no less considerable than the *whole of the internal revenue.* The same proposal testifies the brilliant success of our fiscal system generally; and that it is more than equal to all that has been undertaken, to all that has been promised to the nation.

The report of the Secretary of the Treasury, as published, confirms this high commendation of the conduct of the *former administrations.* After relieving each State from the burden of its particular debt, by assuming the payment of it on account of the United States, in addition to the general debt of the nation; after settling the accounts between the States relatively to their exertions for the common defence in our revolutionary war, and providing for the balances found due to such of them as were creditors; after maintaining, with complete success, an obstinate and expensive war with the Indian tribes; after making large disbursements for the suppression of two insurrections against the government; after liberal contributions to the Barbary powers, to induce them to open to our merchants the trade of the Mediterranean; after incurring a responsibility for indemnities

to a large amount, due to British merchants, in consequence of infractions of the treaty of peace by some of the States; after heavy expenditures for creating and supporting a navy, and for other preparations, to guard our independence and territory against the hostilities of a foreign nation; after the accomplishment of all these very important objects, it is now declared to the United States, by the present head of the Treasury, by the confidential minister of the present Chief Magistrate, by the most subtle and implacable of the enemies of the former administrations, "That the actual revenues of the Union are sufficient *to defray all the expenses, civil and military,* of government, *to the extent authorized by existing laws,* to meet ALL THE ENGAGEMENTS OF THE UNITED STATES; *and to discharge in fifteen years and a half,* THE WHOLE OF OUR PUBLIC DEBT"—foreign as well as domestic, *new* as well as *old.* Let it be understood, that the revenues spoken of were *all provided under the two first administrations;* and that the "existing laws" alluded to, were all passed under the same administrations; consequently, that *the revenues had not been increased, nor the expenses diminished, by the men who now hold the reins:* and then let it be asked, whether so splendid a result does not reflect the highest credit on those who in time past have managed the affairs of the nation? Does not the picture furnish matter not only for consolation, but even for exultation, to every true friend of his country? And amidst the joy which he must feel in the contemplation, can he be so unjust as to refuse the tribute of commendation to those, by whose labors his country has been placed on so fair an eminence? Will he endure to see any part of the fruits of those labors blasted or hazarded, by a voluntary surrender of any portion of the means which are to insure the advantages of so bright a prospect?

In vain will envy or malevolence reply, "The happy situation in which we are placed is to be attributed, not to the labors of those who have heretofore conducted our affairs, but to an unforeseen and unexpected progress of our country." Candor and truth will answer—Praise is always due to public men who take their measures in such a manner as to derive to the nation the benefit of favorable circumstances which are possible, as well a of those which are foreseen. If proportionate provision had not

been made, concurrently with the progress of our national resources, the effect of them would not have been felt as to the past, and would not have been matured as to the future.

But why should it be pretended that this progress was not anticipated? In past experience, there were many data for calculation. The ratio of the increase of our population had been observed and stated; the extent and riches of our soil were known; the materials for commercial enterprise were no secret; the probable effect of the measures of the government, to foster and encourage navigation, trade, and industry, was well understood; and especially, the influence of the means which were adapted to augment our active capital, and to supply a fit and adequate medium of circulation, towards the increase of national wealth, was declared and insisted upon, in official reports. Though adventitious circumstances may have aided the result, it is certain, that a penetrating and comprehensive mind could be at no loss to foresee a progress of our affairs, similar to what has been experienced. Upon this anticipation, the assumption of the State debts, and other apparently bold measures of the government, were avowedly predicated, in opposition to the feeble and contracted views of the LITTLE POLITICIANS, who now triumph in the success of their arts, and enjoy the benefits of a policy, which they had neither the wisdom to plan nor the spirit to adopt; idly imagining that the cunning of a demagogue and the talents of a statesman are synonymous. Consummate in the paltry science of courting and winning popular favor, they falsely infer that they have the capacity to govern, and they will be the last to discover their error. But let them be assured that the people will not long continue the dupes of their pernicious sorceries. Already the cause of truth has derived this advantage from the crude essays of their chief, that the film has been removed from many an eye. The credit of great abilities was allowed him by a considerable portion of those who disapproved his principles; but the short space of nine months has been amply sufficient to dispel that illusion; and even some of his most partial votaries begin to suspect that they have been mistaken in the OBJECT OF THEIR IDOLATRY.

LUCIUS CRASSUS.

AMENDMENT OF THE CONSTITUTION.

RESOLUTIONS FOR THE AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES IN THE LEGISLATURE OF NEW-YORK.

1802.

Resolved: as the sense of the legislature, that the following amendments ought to be incorporated into the Constitution of the United States, as a necessary safeguard in the choice of a President and Vice-President, against pernicious dissensions, as the most eligible mode of obtaining a full and fair expression of the public will in such election.

1st. That Congress shall, from time to time, divide each State into districts, equal to the whole number of Senators and Representatives from such State in the Congress of the United States, and shall direct the mode of choosing an elector of President and Vice-President, in each of the said districts, who shall be chosen by citizens who have the qualifications requisite for electors of the most numerous branch of the State Legislature, and that the districts shall be formed, as nearly as may be, with an equal proportion of population in each, and of counties, and, if necessary, parts of counties contiguous to each other, except where there may be any detached portion of territory, not sufficient of itself to form a district, which then shall be annexed to some other nearest thereto.

2d. That in all future elections of President and Vice-President, the persons voted for shall be particularly designated, by declaring which is voted for as President, and which as Vice-President.

Resolved, that the president of the Senate, and speaker of the Assembly, transmit a copy of the preceding resolutions to the Senators and Representatives in Congress, from this State, with an earnest request, that they would use their best exertions for obtaining the adoption of the above amendments, or other amendments in substance equivalent, so as that the President

and Vice-President may be separately designated in voting for them, and that the electors for both may be chosen in distinct districts.

SUPPLYING NEW-YORK WITH WATER.

1802.

To the Honorable the Legislature of the State of New-York:

The memorial of the subscribers, citizens of New-York, respectfully showeth—

That your memorialists have become alarmed, lest a difference of opinion about the best mode of providing the means of conveying water in pipes throughout the city (a measure which your memorialists deem of essential consequence), should prevent any law being passed on the subject.

That without desiring to interfere with the plan which, under the patronage of the corporation of the city, they understand, has been presented to your consideration, they have thought it may not be improper to suggest an alternative, in case that plan should not be improved.

It is, that a company may be incorporated with a capital not exceeding one million of dollars, to be formed by voluntary subscriptions of fifty dollars to a share, and with the necessary powers to enable them to act.

Of this capital, it may be expedient to reserve to the corporation, at its option, a number of shares not exceeding one third; and it may be provided that the recorder shall be *ex-officio* a director of the company.

It will likewise conduce materially to the success of the plan, if the Legislature will apply to this object, the duties arising from sales by auction. It may be a fund for raising a correspondent principal to be invested in stock of the company, from which a superior revenue may be eventually derived.

Your memorialists deeming it unnecessary to enter into further details, pray leave to bring in a bill for the above mentioned purpose.

PLAN OF THE MERCHANTS' BANK.

To all to whom these presents shall come, or in any wise concern.

Be it known and made manifest, that we the subscribers, have formed a company or limited partnership, and do hereby associate and agree with each other, to conduct business in the manner hereinafter specified and described, by and under the name and style of the "MERCHANTS' BANK," and we do hereby mutually covenant, declare, and agree, that the following are and shall be the fundamental articles of this our association and agreement with each other, by which we, and all persons who at any time hereafter may transact business with the said company, shall be bound and concluded.

I. The capital stock of the said company shall consist of one million two hundred and fifty thousand dollars, in money of the United States. The said capital stock shall be divided into shares of fifty dollars each: two dollars and fifty cents on each share shall be paid at the time of subscribing, and the remainder shall be paid at such times, and in such proportions as the board of directors shall order and appoint, under pain of forfeiting to the said company the said shares, and all previous payments thereon: but no payment shall be required, unless by a notice to be published for at least fifteen days, in two newspapers printed in the city of New-York.

II. The affairs of the said company, shall be conducted by sixteen directors, who shall elect one of their number to be the president thereof, and nine of the directors shall form a board or quorum for transacting all the business of the company, except

ordinary discounts, which it shall be in the power of any five of the directors to perform, of whom the president shall always be one, except in case of his sickness or necessary absence, when his place may be supplied by any other director, whom he by writing under his hand, shall nominate for that purpose; and until the second Tuesday in June, one thousand eight hundred and four, Oliver Wolcott, Richard Varick, Peter Jay Munro, Joshua Sands, Thomas Storm, William W. Woolsey, John Hone, John Kane, Joshua Jones, Robert Gilchrist, Wynant Van Zandt, jun., Isaac Bronson, James Roosevelt, John Swartwout, Henry I. Wyckoff, and Isaac Hicks, shall be directors of the said company; the directors from and after that period, shall be elected for one year by the stockholders, for the time being, and each director shall be a stockholder at the time of his election, and shall cease to be a director if he should cease to be a stockholder: and the number of votes which each stockholder shall be entitled to, shall be equal to the number of shares which he shall have held on the books of the company, for at least sixty days prior to the election; and all stockholders shall vote at elections by ballot, either personally or by proxy; to be made in such form as the board of directors may appoint.

III. A general meeting of the stockholders of the company shall be holden upon the first Tuesday of June, in every year (excepting in June now next ensuing), at such place as the board of directors shall appoint, by notice, to be published in two newspapers printed in the city of New-York, at least fifteen days previous to such meeting, for the purpose of electing directors for the ensuing year, who shall take their seats at the board on the second Tuesday in the same month of June, and immediately proceed to elect the president.

IV. The board of directors are hereby fully empowered to make, revise, and alter or annul, all such rules, by-laws, and regulations, for the government of the company, and that of their officers, servants, and affairs, as they, or a majority of them, shall from time to time think expedient, not inconsistent with law, or these articles of association; and to use, employ, and dispose of the joint stock, funds or property of the said company (subject only to the restrictions herein after contained) as to them, or a majority of them, shall seem expedient.

V. All bills, bonds, notes, and every contract and engagement on behalf of the company, shall be signed by the president; and countersigned or attested by the cashier of the company; and the funds of the company shall in no case be held responsible for any contract or engagement whatever, unless the same shall be so signed and countersigned, or attested as aforesaid.

VI. The books, papers, correspondence and funds of the company, shall at all times be subject to the inspection of the directors.

VII. The said board of directors shall have power to appoint a cashier, and all other officers and servants, for executing the business of the company; and to establish the compensations to be paid to the president and all the other officers and servants of the company respectively; all which, together with all other necessary expenses, shall be defrayed out of the funds of the company.

VIII. A majority of the directors shall have power to call a general meeting of the stockholders, for purposes relative to the concerns of the company; giving at least thirty days' notice, in two of the public newspapers, printed in the city of New-York, and specifying in such notice the object or objects of such meeting.

IX. The shares of capital stock, at any time owned by any individual stockholder, shall be transferable on the books of the company, according to such rules as, conformable to law, may be established in that behalf by the board of directors; but all debts actually due and payable to the company, by a stockholder requesting a transfer, must be satisfied before such transfer shall be made, unless the board of directors shall direct to the contrary.

X. No transfer of stock in this company shall be considered as binding upon the company, unless made in a book or books, to be kept for that purpose by the company. And it is hereby further expressly agreed and declared, that any stockholder, who shall transfer in manner aforesaid all his stock or shares in this company, to any other person or persons whatever, shall *ipso facto* cease to be a member of this company; and that any person or persons whatever, who shall accept a transfer of any stock or

share in this company, shall *ipso facto* become and be a member of this company, according to these articles of association.

XI. It is hereby expressly and explicitly declared to be the object and intention of the persons who associate under the style or firm of the "Merchants' Bank," that the joint stock or property of the said company (exclusive of dividends to be made in the manner hereinafter mentioned) shall alone be responsible for the debts and engagements of the said company. And that no person, who shall or may deal with this company, or to whom they shall or may become in any wise indebted, shall on any pretence whatever have recourse against the separate property of any present or future member of this company, or against their persons, further than may be necessary to secure the faithful application of the funds thereof, to the purposes to which by these presents they are liable. But all persons accepting any bond, bill, note, or other contract of this company, signed by the president, and countersigned or attested by the cashier of the company for the time being, or dealing with it in any other manner whatsoever, thereby respectively give credit to the said joint stock or property of the said company, and thereby respectively disavow having recourse, on any pretence whatever, to the person or separate property of any present or future member of this company, except as above mentioned. And all suits to be brought against this company (if any shall be) shall be brought against the president for the time being; and in case of his death or removal from office, pending any such suit against him, measures shall be taken at the expense of the company for substituting his successor in office as a defendant; so that persons having demands upon the company, may not be prejudiced or delayed by that event, or if the person suing shall go on against the person first named as defendant (notwithstanding his death or removal from office), this company shall take no advantage by writ of error, or otherwise, of such proceeding, on that account; and all recoveries had in manner aforesaid, shall be conclusive upon the company, so far as to render the company's said joint stock or property liable thereby, and no further; and the company shall immediately pay the amount of such recovery out of their joint stock, but not

otherwise. And in case of any suit at law, the president shall sign his appearance upon the writ, or file common bail thereto; it being expressly understood and declared, that all persons dealing with the said company agree to these terms, and are to be bound thereby.

XII. Dividends of the profits of the company, or of so much of the said profits as shall be deemed expedient and proper, shall be declared and paid half yearly during the months of May and November in every year, and shall from time to time be determined by a majority of the said directors, at a meeting to be held for that purpose, and shall in no case exceed the amount of the net profits actually acquired by the company; so that the capital stock of the company shall never be impaired by dividends: and at the expiration of every three years, from the first Tuesday of June next, a dividend of surplus profits shall be made, but the directors shall be at liberty to retain at least one per cent. upon the capital, as a fund for future contingencies.

XIII. If the said directors shall at any time, wilfully and knowingly, make or declare any dividend which shall impair the said capital stock, all the directors present at the making or declaring such dividend, and consenting thereto, shall be liable, in their individual capacities, to the company, for the amount or proportion of the said capital stock so divided by the said directors. And each director who shall be present at the making or declaring of such dividend, shall be deemed to have consented thereto, unless he shall immediately enter, in writing, his dissent on the minutes of the proceedings of the board, and give public notice to the stockholders, that such dividend has been declared.

XIV. These articles of agreement shall be published in at least three newspapers, printed in the city of New-York, for one month; and for the further information of all persons, who may transact business with, or in any manner give credit to this company, every bond, bill, note, or other instrument or contract, by the effect or terms of which the company may be charged or held liable for the payment of money, shall specially declare in such form as the board of directors shall prescribe, *that payment shall be made out of the joint funds of the Merchants' Bank, according*

to the present articles of association, and not otherwise; and a copy of the eleventh article of this association shall be inserted in the bank book of every person depositing money, or other valuable property, with the company for safe custody, or a printed copy shall be delivered to every such person, before any such deposit shall be received from him. And it is hereby expressly declared, that no engagement can be legally made in the name of the said company, unless it contain a limitation or restriction, to the effect above recited. And the company hereby expressly disavow all responsibility, for any debt or engagement, which may be made in their name, not containing a limitation or restriction to the effect aforesaid.

XV. The company shall in no case be owners of any ships or vessels, or directly or indirectly concerned in trade, or the importation or exportation, purchase or sale of any goods, wares, or merchandise whatever (bullion only excepted), unless by selling such goods, wares, and merchandise, as shall be truly pledged to them, by way of security for debts due to the said company.

XVI. If a vacancy shall at any time happen among the directors, by death, resignation, or otherwise, the residue of the directors, for the time being, shall immediately elect a director, to fill the said vacancy, until the next election of directors, to be made according to the second article of these presents.

XVII. This association shall continue until the first Tuesday of June, one thousand eight hundred and fifteen, and no longer; but the proprietors of two thirds of the capital stock of the company may, by their concurring votes, at a general meeting to be called for that express purpose, dissolve the same at any prior period; provided, that notice of such meeting, and of its object, shall be published in at least three newspapers, to be printed in the city of New-York, for at least six months previous to the time appointed for such meeting.

XVIII. Immediately on any dissolution of this association, effectual measures shall be taken by the directors then existing, for closing all the concerns of the company, and for dividing the capital and profits, which may remain, among the stockholders, in proportion to their respective interests.

In witness thereof, we have hereunto set our names or firms the seventh day of April, one thousand eight hundred and three.

LAW BRIEFS.

VALIDITY OF CERTAIN BRITISH ACTS.

Question. Will the acts (particularly judgments and executions) of courts, exercising jurisdiction under the authority of Great Britain, subsequent to the time when by the treaty of peace the western posts ought to have been delivered up, within the districts comprehending those posts, be recognized as valid by the courts of the United States?

This question is both new and difficult. The argument for the negative is—that the treaty of peace having admitted those territories to be within the United States, the detention of them after the time when they ought to have been surrendered, and all exercise of inspection over them by Great Britain after that time, to be wrongful and unlawful; especially as not sanctioned by the *jus belli*, there being a state of peace, consequently the tribunals of Great Britain as illegal and incompetent, interfering with those of the United States, and their acts as nullities.

The argument for the affirmative is—that Great Britain being antecedently in the possession of those posts (*jure belli*) and not having actually restored them to the jurisdiction of the United States after the peace, her anterior jurisdiction must be supposed to have continued, and that of the United States in virtue of territorial right, suspended by the adverse possession of a foreign sovereign power; that, therefore, there was no interference of jurisdiction, especially as the United States had not within the districts in question any competent organs to exercise jurisdiction. That the treaty of peace having only stipulated

that the posts should be delivered up as soon as conveniently might be, there was no *judiciary epoch* from which to date the cessation of British jurisdiction and the commencement of American.

That the wrongful detention was a question between the two governments foreign to the fact of jurisdiction, as it respected individuals and the effects of it. That with regard to those who were under the coercion of the jurisdiction *in fact*, and whose mutual dealings had reference to it, *the legal effects* ought to be according to *the fact*. That convenience and legal justice will both be promoted by this principle and extremely infringed by its opposite.

It is impossible to foresee with certainty what will be the determination of the courts of the United States on the point; but it is conceived that the argument for the affirmative, on great principles of policy, convenience and right, ought to prevail, and it is presumed that it will.

CARRIAGE TAX.

February 25, 1795.

What is the distinction between *direct* and *indirect* taxes? It is a matter of regret that terms so uncertain and vague in so important a point are to be found in the Constitution. We shall seek in vain for any antecedent settled legal meaning to the respective terms—there is none.

We shall be as much at a loss to find any disposition of either which can satisfactorily determine the point.

Shall we call an indirect tax, a tax which is ultimately paid by a *person, different* from the one who pays it in the first instance?

Truly speaking, there is no such tax—those on imported articles best claim the character. But in many instances the merchant cannot transfer the tax to the buyer; in numerous cases it falls on himself, partly or wholly. Besides, if the same article

which is imported by a merchant for *sale*, is imported by a merchant for *his ownuse*, or by a lawyer, a physician, or mechanic, for his own use, there can be no question about the *transfer* of the tax. It remains upon him who pays it.

According to that rule, then, the same tax may be both a *direct* and *indirect* tax, which is an absurdity. To urge that a man may either buy an article already imported, or import it himself, amounts to nothing; sometimes he could not have that option.

But the option of an individual cannot alter the nature of a thing. In like manner he might avoid the tax on carriages, by hiring occasionally instead of buying.

The *subject* of taxation, not the *contingent* optional conduct of individuals, must be the criterion of direct or indirect taxation. Shall it be said that an indirect tax is that of which a man is not conscious when he pays? Neither is there any such tax. The ignorant may not see the tax in the enhanced price of the commodity—but the man of reflection knows it is there. Besides, when any *but* a merchant pays, as in the case of the lawyer, &c., who imports for himself, he cannot but be conscious that it falls upon himself.

By this rule, also, then a tax would be both *direct* and *indirect* —and it will be equally impracticable to find any other precise or satisfactory criterion.

In such a case no construction ought to prevail calculated to defeat the express and necessary authority of the government.

It would be contrary to reason, and to every rule of sound construction, to adopt a principle for regulating the exercise of a clear constitutional power which would defeat the exercise of the power.

It cannot be contested that a duty on carriages specifically, is as much within the authority of the government as a duty on lands or buildings.

Now if a duty on carriages is to be considered as a *direct tax*, to be apportioned according to the rates of representation, very absurd consequences must ensue.

'Tis *possible* that a particular State may have no carriages of the description intended to be taxed, or a very small number.

But each State would have to pay a proportion of the sum to be laid, according to its relative numbers; yet, while the State would have to pay a quota, it might have no carriages upon which its quota could be assessed, or so few, as to render it ruinous to the owners to pay the tax. To consider then a duty on carriages as a direct tax, may be to defeat the power of laying such a duty. This is a consequence, which ought not to ensue from construction.

Further: If the tax on carriages be a direct tax, that on ships according to their tonnage must be so likewise. Here is not a consumable article. Here the tax is paid by the owner of the thing taxed, from time to time, as would be the tax on carriages.

If it be said that the tax is indirect because it is alternately paid by the freighter of the vessel, the answer is, that sometimes the owner is himself the freighter, and at other times the tonnage accrues *when* there is no *freight*, and is a dead charge on the owner of the vessel.

Moreover, a tax on a hackney or stage-coach or other carriage, or on a dray or cart employed in transporting commodities for hire, would be as much a charge on the freight as a tax upon vessels; so that, if the latter be an indirect tax, the former cannot be a direct tax.

And it would be too great a refinement for a rule of practice in government to say, that a tax on a hackney or stage-coach, and upon a dray or cart, is an indirect one, and yet a tax upon a coach or wagon ordinarily used for the purposes of its owner, is a direct one.

The only known source of the distinction between direct and indirect taxes is in the doctrine of the French Economists—Locke and other speculative writers—who affirm that all taxes fall ultimately upon land, and are paid out of its produce, whether laid immediately upon itself, or upon any other thing. Hence, taxes upon lands are in that system called *direct* taxes; those on all other articles *indirect* taxes.

According to this, land taxes only would be *direct* taxes, but it is apparent that something more was intended by the Constitution. In one case, a capitation is spoken of as a direct tax.

But how is the meaning of the Constitution to be determined? It has been affirmed, and so it will be found, that there is no general principle which can indicate the boundary between the two. That boundary, then, must be fixed by a species of arbitration, and ought to be such as will involve neither absurdity nor inconvenience.

The following are presumed to be the only direct taxes.

Capitation or Poll taxes.

Taxes on Lands and Buildings.

General assessments, whether on the whole property of individuals, or on their whole real or personal estate; all else must of necessity be considered as indirect taxes.

To apply a rule of apportionment according to numbers to taxes of the above description, has some *rationale* in it; but to extend an apportionment of that kind to other cases, would, in many instances, produce, as has been seen, preposterous consequences, and would greatly embarrass the operations of the government. Nothing could be more capricious or outre, than the application of quotas in such cases.

The Constitution gives power to Congress to lay and collect the taxes, duties, imports, and excises, requiring that all duties, imports, and excises shall be uniform throughout the United States.

Here *duties*, *imports*, and *excises* appear to be contradistinguished from *taxes*, and while the latter is left to apportionment, the former are enjoined to be uniform.

But unfortunately, there is equally here a want of criterion to distinguish *duties*, *imports*, and *excises* from taxes.

If the meaning of the word *excise* is to be sought in the British statutes, it will be found to include the duty on carriages, which is there considered as an *excise*, and then must necessarily be uniform and liable to apportionment; consequently, not a direct tax.

Some argument results from this, though not perhaps a conclusive one: yet where so important a distinction in the Constitution is to be realized, it is fair to seek the meaning of terms in the statutory language of that country from which our jurisprudence is derived.

THE LAW OF LIBEL.

1804.

I. The liberty of the press consists in the right to publish with impunity truth, with good motives, for justifiable ends, though reflecting on government, magistracy, or individuals.

II. That the allowance of this right is essential to the preservation of free government—the disallowance of it, fatal.

III. That its abuse is to be guarded against, by subjecting the exercise of it to the animadversion and control of the tribunals of justice; but that this control cannot safely be intrusted to a permanent body of magistracy, and requires the effectual co-operation of court and jury.

IV. That to confine the jury to the mere question of publication and the application of terms, without the right of inquiry into the intent or tendency, referring to the court the exclusive right of pronouncing upon the construction, tendency, and intent of the alleged libel, is calculated to render nugatory the function of the jury; enabling the court to make a libel of any writing whatsoever, the most innocent or commendable.

V. That it is the general rule of criminal law, that the intent constitutes the crime, and that it is equally a general rule, that the intent, mind, or *quo animo*, is an inference of fact to be drawn by the jury.

VI. That if there are exceptions to this rule, they are confined to cases in which not only the principal fact, but its circumstances can be and are specifically defined by statute or judicial precedent.

VII. That in respect to libel there is no such specific and precise definition of facts and circumstances to be found, that consequently it is difficult, if not impossible, to pronounce that any writing is per se and exclusive of all circumstances libellous; that its libellous character must depend on intent and tendency, the one and the other being matter of fact.

VIII. That the definitions or descriptions of libels to be found in the books predicate them upon some malicious or mischievous

intent or tendency, to expose individuals to hatred or contempt, or to occasion a disturbance or breach of the peace.

IX. That in determining the character of a libel, the truth or falsehood is in the nature of things a material ingredient, though the truth may not always be decisive, but being abused, may still admit of a malicious and mischievous intent which may constitute a libel.

X. That in the Roman law, one source of the doctrine of libel, the truth in cases interesting to the public, may be given in evidence. That the ancient statutes probably declaratory of the common law, make the falsehood an ingredient of the crime. That ancient precedents in the courts of justice correspond, and that these precedents to this day charge a malicious intent.

XI. That the doctrine of excluding the truth as immaterial, originated in a tyrannical and polluted source, the court of Star Chamber, and that though it prevailed a considerable length of time, yet there are leading precedents down to the revolution, and even since, in which a contrary practice prevailed.

XII. That this doctrince being against reason and natural justice, and contrary to the original principles of the common law enforced by statutory provisions, precedents which support it deserve to be considered in no better light than as *malus usus* which ought to be abolished.

XIII. That in the general distribution of powers in our system of jurisprudence, the cognizance of law belongs to the court, of fact to the jury; that as often as they are not blended, the power of the court is absolute and exclusive. That in civil cases it is always so, and may rightfully be so exerted. That in criminal cases the law and fact being always blended, the jury, for reasons of a political and peculiar nature, for the security of life and liberty, is intrusted with the power of deciding both law and fact.

XIV. That this distinction results, 1, from the ancient forms of pleading in civil cases, none but special pleas being allowed in matter of law; in criminal, none but the general issue; 2, from the liability of the jury to attaint in civil cases, and the general power of the court as its substitute in granting new trials, and

from the exemption of the jury from attaint in criminal cases, and the defect of power to control their verdicts by new trials, the test of every legal power being its capacity to produce a definitive effect liable neither to punishment nor control.

XV. That in criminal cases, nevertheless, the court are the constitutional advisers of the jury in matter of law; who may compromit their consciences by lightly or rashly disregarding that advice, but may still more compromit their consciences by following it, if exercising their judgments with discretion and honesty they have a clear conviction that the charge of the court is wrong.

LANSING OR BURR.

REASONS WHY IT IS DESIRABLE THAT MR. LANSING RATHER THAN COL. BURR SHOULD SUCCEED.

1804.

1. Col. Burr has steadily pursued the tract of democratic politics. This, he has done either from *principle* or from *calculation*. If the former, he is not likely now to change his plan, when the federalists are prostrate, and their enemies predominant. If the latter, he will certainly not at this time relinquish the ladder of his ambition, and espouse the cause or views of the weaker party.

2. Though detested by some of the leading Clintonians, he is certainly not personally disagreeable to the great body of them, and it will be no difficult task for a man of talents, intrigue, and address, possessing the chair of government, to rally the great body of them under his standard, and thereby to consolidate for personal purposes, the mass of the Clintonians, his own adherents among the democrats, and such federalists as, from personal good-will or interested motives, may give him support.

3. The effect of his elevation will be to reunite under a more

adroit, able, and daring chief, the now scattered fragments of the democratic party, and to reinforce it by a strong detachment from the federalists. For though virtuous federalists, who, from miscalculation may support him, would afterwards relinquish his standard, a large number from various motives would continue attached to it.

4. A farther effect of his elevation by aid of the federalists will be, to present to the confidence of New England, a man, already the man of the democratic leaders of that country, and towards whom the mass of the people have no weak predilection, as their countryman, as the grandson of President Edwards, and the son of President Burr. In vain will certain men resist this predilection, when it can be said, that he was chosen governor of this State, in which he was best known, principally, or in a great degree, by the aid of the federalists.

5. This will give him fair play to disorganize New England, if so disposed; a thing not very difficult, when the strength of the democratic party in each of the New England States is considered, and the natural tendency of our civil institutions is duly weighed.

6. The ill opinion of Jefferson, and jealousy of the ambition of Virginia, is no inconsiderable prop of good principles in that country. But these causes are leading to an opinion, that a dismemberment of the Union is expedient. It would probably suit Mr. Burr's views to promote this result, to be the chief of the Northern portion; and placed at the head of the State of New-York, no man would be more likely to succeed.

7. If he be truly, as the federalists have believed, a man of irregular and unsatiable ambition, if his plan has been to rise to power on the ladder of Jacobinic principles, it is natural to conclude that he will endeavor to fix himself in power by the same instrument; that he will not lean on a fallen and falling party, generally speaking, of a character not to favor usurpation, and the ascendency of a despotic chief. Every day shows, more and more, the much to be regretted tendency of governments entirely popular, to dissolution, and disorder. Is it rational to expect that a man, who had the sagacity to foresee this tendency,

and whose temper would permit him to bottom his aggrandizement on popular prejudices and vices, would desert the system at a time, when, more than ever, the state of things invites him to adhere to it.

8. If Lansing is governor, his personal character affords some security against pernicious extremes, and at the same time renders it morally certain, that the democratic party, already much divided, and weakened, will moulder, and break asunder more and more. This is certainly a state of things favorable to the future ascendency of the wise and good. May it not lead to a recasting of parties, by which the federalists will gain a great accession of force from former opponents? At any rate is it not wiser in them to promote a course of things, by which schism among the democrats will be fostered and increased, than on fair calculation to give them a chief, better able than any they have yet had, to unite and direct them; and in a situation to infer rottenness in the only part of our country which still remains sound, the federal States of New England?

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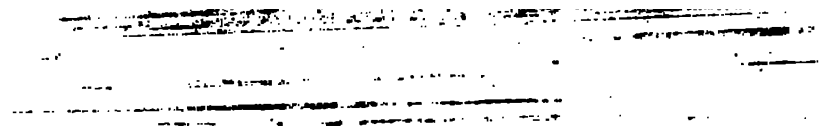
ERRATA.

Vol. i., p. 20, for "Edminston" read "Edmonson."
144, for "We," line 17 from top, read "He."
227, for "some," line 13 from top, read "same."
225, in second line, before "have" read "will."
324, at bottom, for "decicisely" read "decisively."
419, for "Clarkeson" read "Clarkson."
Vol. ii., p. 396, in line 3 from bottom, omit "shall."
397, for "full," in line 19 from top, read "first."
in line next to bottom, for "not be less" read "be not less."
399, in line 9 from top, for "shall be not" read "shall not be."
in last line, omit "individually."
400, in lines 16 and 17 from top, for "Junior" read "Senior."
402, in line 15 from top, for "finances" read "finance."
in line 23 from top, for "office" read "offices."
in line 32 from top, for "or" read "nor."
403, in line 14 from top, for "and" read "who."
404, before "Impeachments," in line 14 from top, read "Sec. ii."
in line 29 from top, omit "a."
407, in line 8 from top, before "its" read "to."
408, in line 21 from top, after "more" read "States."
Vol. iv., p. 595, for "Smilee" read "Smilie,"



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